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No. _____

In the Supreme Court of the United States

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES (FORMERLY MICHIGAN DEPARTMENT OF COMMERCE) AND ITS DIRECTOR; MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, JOHN C. SHEA AND DAVID A. SVANDA; AND THOMAS LONERGAN,

Petitioners,

v.

SCHNEIDER NATIONAL CARRIERS, INC.; SCHNEIDER TRANSPORT, INC.; SCHNEIDER NATIONAL BULK CARRIERS, INC.; SCHNEIDER TANK LINES, INC.; and SCHNEIDER SPECIALIZED CARRIERS, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under the Single State Registration System, 49 USC 14504(c)(2)(B)(iv)(III), a State is authorized to charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." In September, 1991, the Petitioners State of Michigan, *et al* mailed renewal registration forms to the Respondent charging $10 per vehicle for the 1992 registration year. In October, 1991, the Petitioners collected those registration fees. The question presented is whether such fees were "collected or charged as of November 15, 1991" in accordance with 49 USC 14504(c)(2)(B)(iv)(III).

PARTIES TO THE PROCEEDING

Petitioners are the State of Michigan, Michigan Department of Treasury and its State Treasurer, Michigan Department of Consumer and Industry Services (formerly Michigan Department of Commerce) and its Director, Michigan Public Service and its Commissioners, John G. Strand, John G. Shea and David A. Svanda, and Thomas Lonergan.

Respondents are Schneider National Carriers, Inc., Schneider Transport, Inc., Schneider National Bulk Carriers, Inc., Schneider Tank Lines, Inc, and Schneider Specialized Carriers, Inc.

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JURISDICTION

The Michigan Supreme Court issued an order on April 9, 2004 denying the State's Application for Leave to Appeal the August 5, 2003 Opinion of the Michigan Court of Appeals. This Petition for Certiorari is being filed within 90 days of the April 9, 2004 Order. The jurisdiction of this Court is invoked under 28 USC 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory provisions are reproduced in the Appendix. The statutes involved are 49 USC 11506 (Pet. App. 35a-37a) (since recodified as 49 USC 14504) and Mich Compiled Laws (MCL) 478.7(4). (Pet. App. 38a). The Constitutional provision involved is the Commerce Clause, US Const, Art I, § 8, Clause 3.

STATEMENT

A. Introduction.

In *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002). In *Yellow Transportation*, this Court held that it was unlawful for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system. This Court's decision in *Yellow Transportation* left unresolved the issue of whether Congress in 49 USC 14504(c)(2)(B)(iv)(III) intended to cut off a state's right to continue charging and collecting interstate motor vehicle registration fees, authorized by state law, that were charged or collected under a fee system in place as of a November 15, 1991 federal statutory deadline, but related to the 1992 annual registration period.

Despite the fact that the Petitioners had complied with the plain language of 49 USC 14504(c)(2)(B)(iv)(III) by charging and collecting registration fees from Respondent prior to the November 15, 1991 deadline, the Michigan Court of Appeals, on second remand, held that the Petitioners had not complied with the federal statute. *Schneider National Carriers, Inc, et al, v State of Michigan (on second remand)*, Case No. 208346 (August 5, 2003) (unpublished), (Pet. App. 3a-5a). The Michigan Supreme Court denied review, 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

B. History of Proceedings.

Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc. and; Schneider Specialized Carriers, Inc. (collectively, Schneider) are for-hire trucking companies doing business in the State of Michigan. On October 22, 1996, Schneider brought suit in the Michigan Court of Claims requesting a refund of fees it paid to the Petitioners State of Michigan, Michigan Department of Treasury and its State Treasurer, Michigan Department of Consumer and Industry Services (formally Michigan Department

of Commerce) and its Director; Michigan Public Service Commission and its Commissioners, John G. Strand, John C. Shea and David A. Svanda; and Thomas Lonergan (collectively, Petitioners) under the Single State Registration System (SSRS). 49 USC 11506 *et seq*, recodified at 49 USC 14504. Under the SSRS, states may assess interstate motor carriers a fee of no more than $10 per vehicle, not to exceed the amount that the state collected or charged as of November 15, 1991. To promote efficiency, the SSRS requires each motor carrier to pay all its fees through its home state which then collects and remits fees charged by other states. In 1991, the MPSC determined that reciprocity was to be based on the principal place of business of the motor carrier rather than the state in which the vehicle was base-plated.

For the registration year 1991, Schneider's vehicles were base-plated in Illinois. For that registration year, the MPSC did not charge a per vehicle fee for Schneider's vehicles, due to a reciprocity agreement it had with Illinois. However, beginning September, 1991 for the 1992 registration year and for registration years thereafter, the MPSC charged Schneider the $10 fee since Schneider's principal place of business is Wisconsin, a state which never shared reciprocity with Michigan. Schneider, in the Court of Claims, sought a refund for all fees paid for the years 1994-1997. Michigan denied all claims with the exception of the overpayment made for 1996. Both Schneider and Petitioners filed Motions for Summary Disposition. In an Opinion and Order dated November 24, 1997, the Michigan Court of Claims granted summary disposition in favor of Petitioners. (Pet. App. 11a-22a.)

After the Court of Claims decision, the Michigan Court of Appeals decided *Yellow Freight System, Inc v Michigan,* 231 Mich App 194; 585 NW2d 762 (1998), involving the same issue. In *Yellow Freight, supra,* another panel of the Michigan Court of Appeals held that Michigan had unlawfully collected motor carrier fees from Yellow Freight. Yellow Freight had paid more in fees to Michigan in 1992 than in 1991 due to the MPSC's change in determining reciprocity based on the carrier's principal

place of business as opposed to where the vehicle was base-plated. The Michigan Court of Appeals in *Yellow Freight* determined that a refund of fees was required, finding that the MPSC could not alter its reciprocity agreements. Given that resolution, the Court of Appeals, in an unpublished *per curiam* opinion, dated May 14, 1999, reversed the Court of Claims and found that Schneider was entitled to a refund for the monies in question. (Pet. App. 8a-11a.) The Petitioners then sought review by the Michigan Supreme Court, which ordered that the matter be held in abeyance pending its decision in *Yellow Freight.*

On May 15, 2001, the Michigan Supreme Court issued its decision in *Yellow Freight System, Inc v State of Michigan*, 464 Mich 21; 627 NW2d 236 (2001), reversing the Court of Appeals decision at 231 Mich App 194; 585 NW2d 762 (1998), upon which the Court of Appeals had relied. The Michigan Supreme Court held that, based on the plain language of 49 USC 14504, reciprocity agreements were not relevant in determining what fees were charged as of November 15, 1991. Additionally, the Michigan Supreme Court held that, as of November 15, 1991, the fee charged or collected pursuant to Michigan law was $10. Accordingly, the Court held Yellow Freight was not entitled to the refund it requested. The Michigan Supreme Court vacated the Court of Appeals' May 14, 1999 decision and remanded the case to the Court of Appeals for reconsideration in light of *Yellow Freight System, Inc, supra*. Thereafter on October 19, 2001, the Court of Appeals issued its opinion in *Schneider National Carriers, Inc v State of Michigan*, 247 Mich App 216; 637 NW2d 838 (2001), affirming the Court of Claims on those issues raised by Schneider.

Meanwhile, Yellow Freight and Schneider filed petitions for writ of certiorari which were granted by this Court. This Court then in its November 5, 2002 Opinion in *Yellow Transportation*, reversed the Michigan Supreme Court's holding that the state must look not at the fees paid by Petitioner in a given year, but at the generic fee Michigan charged carriers as of November 15, 1991. Instead this Court held that:

> ISTEA's fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The provision requires that the new system "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U. S. C. §14504(c)(2)(B)(iv)(III). The language "collected or charged" can quite naturally be read to mean fees that a State *actually* collected or charged. The statute thus can easily be read as the ICC chose, making it unlawful "for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." [537 US 45-46.]

This Court, however, specifically noted in *Yellow Transportation* that the Michigan Supreme Court had not previously considered Petitioner's argument that the fees Yellow Transportation paid to Michigan for the 1992 registration year were collected as charged as of November 15, 1991. 49 USC 14504(c)(2)(B)(iv)(III).

Following this Court's decision in *Yellow Transportation*, the Michigan Supreme Court remanded this proceeding to the Michigan Court of Appeals, specifically directing that Court to address the issue of "whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (supp. V 1999)] allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992." (Pet. App. 6a-7a.)

On remand, the Michigan Court of Appeals held that the other Court of Appeals panel's decision in *Yellow Transportation, Inc v State of Michigan (on remand)*, 257 Mich App 602, 613; 669 NW2d 553 (2003), was controlling and resolved the dispositive

issues in Respondents favor. *Schneider National Carriers, Inc. v State of Michigan (on second remand),* Case No. 208346 (August 5, 2003) (unpublished). (Pet. App. 3a-5a.) The Court of Appeals in *Schneider* thus adopted the other panel's decision in *Yellow Tranportation* and held that despite the fact that the fees from Schneider were actually charged and collected by the Petitioners prior to the federally mandated deadline of November 15, 1991 the Petitioners had not complied with the federal statute. The Petitioners then sought review by the Michigan Supreme Court which was denied. 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

C. The federal Single State Registration System.

The resolution of the issue for which review is now sought is controlled by the language of the Single State Registration System (SSRS) that is set forth in 49 USC 14504.[1] To review this issue, it is necessary to understand the history of state regulation of motor carriers in the context of federal regulation.

Congress enacted the Motor Carrier Act of 1935, 49 USC 301 *et seq,* to provide for limited state regulation of interstate commercial transportation. Through various amendments, States were authorized to register interstate motor carriers, subject to supervision of the Interstate Commerce Commission (ICC). Under this registration program, which began in 1965, States choosing to participate were allowed to charge up to $10 for each vehicle registered. As proof of registration each state issued a stamp for each vehicle and these stamps were placed in the appropriate state spot on "bingo cards" carried in the cab of each vehicle.[2]

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[1] The SSRS was originally enacted into law in Section 4005 of the Intermodel Surface Transportation Efficiency Act of 1991. Pub L 102-240, 105 Stat 2146-2148, December 18, 1991 and codified as 49 USC 11506. The SSRS was subsequently re-enacted into law in Title I, § 103 of the ICC Termination Act of 1995, Pub L 104-88, 109 Stat 90 and recodified as 49 USC 14504.

[2] Motor carrier vehicles may carry any number of different cab cards in the cab of each vehicle. Examples include cab cards for the International Registration Plan (IRP), the International Fuel Tax Agreement (IFTA), the "bingo stamp"

In Michigan, although the Michigan Public Service Commission (MPSC) had reciprocity agreements with several states and provinces pertaining to fees for motor carriers in interstate commerce, it did not issue bingo card stamps to interstate, foreign and exempt interstate motor carriers until the Michigan Legislature enacted 1988 PA 347 (Act 347), an amendment to the Michigan Motor Carrier Act, 1933 PA 254, MCL 475.1 *et seq.* Act 347, which became effective January 1, 1989, authorized the MPSC to begin charging regulatory fees[3] for each vehicle of interstate motor carriers. See, MCL 478.7(4) . Additionally, under Act 347, the MPSC was permitted to enter into reciprocity agreements with other states that did not charge vehicles licensed in this state. Thus, beginning in the fall of 1989, the MPSC began issuing bingo card stamps for the registration year beginning 1990.

As of 1991, 38 States, including Michigan, participated in this registration system. Some, but not all, States entered into reciprocal arrangements under which they would discount or waive the fee for carriers based in each other's state. Most States used the motor carrier's principal place of business as the basis for determining reciprocity. Michigan, however, used the State in which the vehicle was base-plated, i.e. where it was registered or license plated, as the basis for determining reciprocity. Under this approach, for registration years 1990 and 1991, Michigan did not charge a fee for vehicles base-plated in a State that did not charge a fee for vehicles that were base-plated in Michigan.

Early in 1991, however, the MPSC determined that granting reciprocity using base-plating, rather than on place of business,

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card for vehicles that operate interstate, and cab cards for each state in which a vehicle may operate intrastate.

[3] As originally enacted, 1988 PA 347 provided that the MPSC was required to charge an annual fee equal to the charge levied on Michigan-licensed motor carrier vehicles in the other state. In 1989, the Michigan Legislature enacted 1989 PA 221 which amended this section by changing the annual registration fee on each vehicle to $10.00.

was unduly complex, inefficient to administer, and inconsistent with the registration system used by virtually all other states. See Affidavit of Thomas R. Lonergan (Pet. App. 23a). For example, vehicles operated by a single motor carrier but base-plated in several different States required several different calculations. *Id.* This significantly increased the possibility of error in reciprocity waivers. *Id.* Further, it became apparent to Michigan that it was one of a very few number of States using this system as opposed to the principal place of business as the basis for affording reciprocity.[4]

Contemporaneous with Michigan's determination that its reciprocity approach was difficult to administer and inconsistent with the approach of other States, Congress was considering legislation to streamline the state registration system. Recognizing that such legislation could include a mandatory uniform approach by participating states, the MPSC decided to terminate its use of base-plating as the method of determining reciprocity in favor of the "place of business" method of determining reciprocity to be consistent with other states. (Pet. App. 23a). Thus, early in 1991, Michigan brought its registration program in line with other state programs by adopting a revised reciprocity system based on the motor carrier's principal place of business. However, rather than implement this change mid-year, the MPSC decided, for the convenience of the industry, it would implement the change in the fall when the annual renewals occurred.

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was enacted into law. Pub L 102-240, 105 Stat 1914-2207. Included within ISTEA was Section 4005, "Single State Registration System," 105 Stat 2146-2148. 49 USC 14504(c). The SSRS created a streamlined system for the registration of a motor carrier's vehicles engaged in interstate commerce. Previously, motor

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[4] Other states that had used base-plating included Oklahoma, North Carolina and Indiana. All the foregoing states participate in the SSRS and now use principal place of business for determining reciprocity.

carriers were required to separately register their vehicles in each state that the vehicles operated in. The SSRS implemented a single state filing concept where a motor carrier would only file in and submit payment to the state in which it was based. That single filing and payment would cover vehicle registrations and fees for all states where the motor carrier operated vehicles. The state in which the motor carrier is based then sends the registrations and fees to all other states where such vehicles are operated.

Congress provided that the SSRS was to take effect by January 1, 1994. 105 Stat 2148.[5] It further provided that the ICC was to prescribe standards for the SSRS. With respect to the fee system under the SSRS, Congress provided, as follows at 49 USC 14504(c)(2)(B)(iv)(III):

> (B) Receipts; fee system. Such amended standards—
>
> (iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.** [49 USC 14504(c)(2)(B)(iv)(III); emphasis added.]

In September 1991, two months before the 45 USC 14504(c)(2)(B)(iv)(III) cut-off date of November 15, 1991, Michigan sent out renewal interstate cab (i.e. bingo) card stamp application forms to motor carriers for the 1992 registration year.

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[5] The effective date of the SSRS was set forth in Section 4005 of ISTEA and codified as 49 USC 11506(c)(3) and may be found at 105 Stat 2148. Subsection (c)(3) of 49 USC 11506 was not included in the subsequent recodification that occurred in 1995 when 49 USC 11506 became 49 USC 14504.

On the back of the application form were instructions which stated that "[t]he cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carriers base of operations." The amount of fees appropriate to a motor carrier's fleet was determined by reference to an accompanying chart identifying cab card stamp fees.

Other than the implementation of Michigan's revised reciprocity system to conform with most other state programs, no changes were made to Michigan's registration fee collection program. Thus, no change was made to Michigan's registration fee of $10.00 per vehicle, as authorized by MCL 478.7(4). Nor were there any change to Michigan's long standing practice of collecting renewal fees in the fall for registration in the upcoming year, as is the practice with most, if not all, other States.[6] As a result of the change for determining reciprocity, some carriers, such as Schneider that previously qualified for reciprocal fee discounts and fee waivers under the base-plating method for determining reciprocity were no longer afforded reciprocity, while others became eligible for reciprocity based on their place of business.

D. Michigan fees charged to and collected from Schneider.

For the registration year 1991, Schneider's vehicles were base-plated in Illinois. Under the base-plating method of determining reciprocity that Michigan had in effect at that time, Schneider was not charged for those bingo card stamps as those states did not charge fees for vehicles based-plated in Michigan. See Affidavit of Thomas R. Lonergan (Pet. App. 23a). Schneider, however, was charged for vehicles that were base-plated in Illinois. *Id.*

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[6] In fact, the single state registration system (SSRS) requires motor carriers to register in the fall preceding the registration year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming year.

After Michigan changed its method for determining reciprocity based on a company's principal place of business, Schneider was charged a $10.00 per vehicle registration fee for all its vehicles, as its principal place of business was in Wisconsin, and Michigan had no reciprocity with the State of Wisconsin. *Id.*

The application form for the 1992 calendar year reflecting the $10 per vehicle registration fee was mailed to Schneider in September 1991. Since September 1991 Michigan has annually charged and Schneider paid a registration fee of $10.00 per vehicle for each vehicle operated in Michigan inasmuch as Schneider's principal place of business remains in Wisconsin and Michigan has no reciprocity with that state.

REASONS FOR GRANTING THE PETITION

A. The issue of whether the Petitioners had complied with 49 USC 11504(c)(2)(B)(iv)(III) by actually charging and collecting registration fees from Respondents prior to the federally mandated deadline of November 15, 1991, is now properly before this Court in accordance with this Court's decision in *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002).

In its decision in *Yellow Transportation, supra*, this Court limited its holding to the single issue of whether the Michigan Supreme Court had erred in determining that only Michigan's ten-dollar "generic" fee was relevant in determining what fee a state "collected or charged" as of November 15, 1991. *Yellow Freight Systems*, 464 Mich at 31. This Court held:

> The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991. [537 US at 48.]

The resolution of this precise question by this Court left unresolved a number of issues that had not been addressed by the Michigan Supreme Court. This Court observed:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for the United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991. [537 US at 44.]

This observation mirrors that of the United States Solicitor General in the *amicus* brief filed on behalf of the United States:[7]

Following the Court's decision in *Yellow Transportation* the Michigan Supreme Court remanded this case to the Michigan Court of Appeals to reconsider preserved arguments of the parties not previously addressed by either supreme court, as follows:

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[7] In its *amicus* brief, the United States Solicitor General observed:

> In particular, the Michigan Supreme Court has not addressed the question of whether ISTEA allows Michigan to set its registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. See Pet. App. 28a. (Michigan Court of Appeals holding that registration "fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991"). That question implicates not only the ICC's decision (see Pet. App. 26a-29a), but also issues about Michigan's ability to modify the base-plate reciprocity policy it followed until 1991 and to adopt a place-of-business reciprocity rule that better fits the Single State Registration System. Those issues should be addressed by the Michigan Supreme Court on remand.

By order of June 24, 2002, the application for leave to appeal from the October 19, 2001 decision of the Court of Appeals was held in abeyance pending the decision of the United States Supreme Court in *Yellow Transportation, Inc v Michigan*, (US Docket No. 01-270). On order of the Court, the decision having been issued by the United State Supreme Court on November 5, 2002, *Yellow Transportation, Inc v Michigan,* 537 U.S. 36; 123 S. Ct. 371; 154 L. Ed. 2d 377 (2002), the application is again considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals decision and we REMAND this case to that court for the reconsideration in light of the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Authority Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)], allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter of representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra,* about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. [*Schneider National Carriers, Inc v State of Michigan,* 468 Mich 862; 659 NW2d 228 (2003).] [Pet. App. 6a-7a.]

The Michigan Court of Appeals on its second remand simply held that the July 22, 2003 opinion by the Michigan Court of

Appeals in *Yellow Transportation, supra,* 257 Mich App at 610-616 was controlling and dispositive of the issues in Respondents' favor. The Michigan Court of Appeals' analysis is erroneous for the reasons fully discussed in Arguments B-D *infra.*

B. The plain and unambiguous language of 49 USC 14504(c)(2)(B)(iv)(III) provides that a State may continue to charge a registration fee that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.

On December 18, 1991, the federal Single State Registration System was signed into law. The SSRS provides in relevant part as follows:

> (c) Single State registration system.
>
> (1) In general. Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 [enacted Dec. 18, 1991], the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which --
>
> (A) a motor carrier is required to register annually with only one State;
>
> (B) the State of registration shall fully comply with standards prescribed under this section; and
>
> (C) such single State registration shall be deemed to satisfy the registration requirements of all other States.
>
> (2) Specific requirements.
>
> (A) Evidence of certificate; proof of insurance; payment of fees. Under the amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier

holding a certificate or permit issued under this subtitle [49 USC §§ 10101 *et seq.*]--

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. Such amended standards--

* * *

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991**. [49 USC 14504(c). (Emphasis added.)]

The critical language is contained in 49 USC 14504(c)(2)(B)(iv)(III) of the SSRS that establishes a fee system that "will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November 15, 1991." Thus, if a state either charged *or* collected a fee as of November 15, 1991, it could continue to do so under the SSRS which took effect in 1994.

C. In accordance with Michigan Compiled Law 478.7(4) the Petitioners charged a $10 per vehicle fee from Respondents prior to the federally mandated deadline of November 15, 1991.

Michigan collects annual registration fees for motor carriers engaged in interstate transportation pursuant to MCL 478.7(4) that provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10 00. The [Michigan Public Service] commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Up until 1991, the MPSC waived the $10.00 registration fee of vehicles base-plated in other states that waived the fee for vehicles base-plated in Michigan. Early in 1991, however, the MPSC's methodology for determining waiver was changed to be consistent with the other states, i.e. reciprocity was to be based on the principal place of business of a carrier. Renewal applications reflecting the principal place of business reciprocity methodology were mailed to all interstate motor carriers in September 1991. Among the motor carriers receiving renewal applications was Respondent Schneider. Thus, Petitioners charged Respondents a $10 per vehicle fee prior to the federally mandated deadline of November 15, 1991.

D. The Michigan Court of Appeals erred when it held that the Petitioners had unlawfully charged the Respondents $10 per vehicle fee under 49 USC 14504(c)(2)(B)(iv)(III) even though the Petitioners had complied with the plain and unambiguous language of that statute when they charged such a fee prior to the federally mandated deadline of November 15, 1991.

The question in this case, not previously addressed by this Court, is whether the State collected *or* charged the $10.00 fee, authorized by MCL 478.7(4), as of November 15, 1991. If the State either charged or collected the $10.00 fee as of November 15, 1991, then 49 USC 14504(c)(2)(B)(iv)(III) authorizes it to continue to charge and collect that fee under the SSRS. The State had been collecting and charging a $10 fee as provided for by MCL 478.7(4) since October 1, 1989. Moreover, the State actually charged the $10 fee to Schneider prior to the November 15, 1991 deadline.

The primary purpose of statutory interpretation is to ascertain and effectuate legislative intent. *Chevron U. S. A. Inc v Natural Resources Defense Council, Inc, et al,* 467 US 837 (1984). In *Timex V.I., Inc v United States, et al,* 157 F3d 879, 881-882 (CA Fed Cir, 1998), the Court observed:

> We do not fulfill our duty to say what the law is, see *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803), by merely agreeing to Commerce's interpretation of the statutory provision at issue if it is "reasonable," regardless of whether we think it correct. Rather, before granting an agency's statutory interpretation such great deference (commonly referred to as "Chevron" deference), we must first carefully investigate the matter to determine whether Congress's purpose and intent on the question at issue is judicially ascertainable. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 & n.9, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984). Only if, after this investigation, we conclude that Congress either

> had no intent on the matter, or that Congress's purpose and intent regarding the matter is ultimately unclear, do we reach the issue of Chevron deference. See id.; cf. *Muwwakkil v. Office of Personnel Management*, 18 F.3d 921, 925 (Fed. Cir. 1994) ("When an agency's interpretation of a statute . . . is contrary to the intent of Congress, as divined from the statute and its legislative history, we owe it no deference."). Indeed, if we hastily "throw up our hands" and declare that Congress's intent is unclear, we abdicate our duty; in essence, we leave statutory construction to an Article II agency, rather than accept the responsibility the Constitution imposes on Article III courts. See *Marbury*, 5 U.S. (1 Cranch) 137 at 177, 2 L. Ed. 60.
>
> To ascertain whether Congress had an intention on the precise question at issue, we employ the "traditional tools of statutory construction." *Chevron*, 467 U.S. at 843 n.9. The first and foremost "tool" to be used is the statute's text, giving it its plain meaning. See *VE Holding Corp. v Johnson Gas Appliance Co.*, 917 F.2d 1574, 1579 (Fed. Cir. 1990). Because a statute's text is Congress's final expression of its intent, if the text answers the question, that is the end of the matter.

The controlling words of 49 USC 14504(c)(2)(B)(iv)(III) are plain and unambiguous and require no judicial construction. The plain meaning of 49 USC 14504(c)(2)(B)(iv)(III) is that it establishes a fee system that will "result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle that such state collected or charged as of November 15, 1991." In this particular case, the fees had been both charged to and collected from Schneider as of November 15, 1991.

The Congressional language in the SSRS establishing and freezing the permitted fee that was "charged or collected as of November 15, 1991" is not ambiguous. It needs no interpretation or embellishment. Congress did not provide that fees collected or charged for the "1991 calendar year" established the cut-off date.

Instead, in 49 USC 14504(c)(2)(B)(iv)(III), Congress chose a precise cut-off date, specifying the exact day, month, and year, i.e., November 15, 1991. If Congress had intended that the cut-off period be synonymous with a calendar year, it would have said so. It did not.

On remand the Michigan Court of Appeals simply held that the decision in *Yellow Transportation (on remand), supra,* 257 Mich App at 610-616, by another panel of the Michigan Court of Appeals panel, was controlling and dispositive of the issues in Respondents' favor. Pet. App. 5a. However, the Michigan Court of Appeals in *Yellow Transportation (on remand), supra,* erred when it imputed the ambiguity this Court found in ISTEA with respect to reciprocity agreements to the otherwise express and unambiguous requirements of 49 USC 14504(c)(2)(B)(iv)(III) as they pertain to the charging and collecting of fees. ISTEA was found to be ambiguous with respect to reciprocity agreements only, and that finding of ambiguity in that limited regard permitted the ICC to engage in a reasonable interpretation of the statute that was afforded deference by this Court under *Chevron*, 467 US at 843. Indeed the Court specifically limited its decision to that issue and expressly noted that it was not deciding the issue pertaining to the charging and collecting of fees. There is no similar ambiguity with regard to the specific requirements of 49 USC 14504(c)(2)(B)(iv)(III), and the Court of Appeals erred in seizing upon this Court's rationale in resolving the reciprocity issue to justify a disregard for the clear and unambiguous requirements of the statute that directed the ICC to:

> "[E]stablish a fee system ... that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." §14504(c)(2)(B)(iv).

There is no ambiguity reflected in this statutory requirement, and this Court should "give effect to the unambiguously expressed intent of Congress" *Chevron, supra*, at 842-843. Michigan charged Schneider the $10 per vehicle fee as of November 15, 1991. Accordingly, Petitioners had complied with the plain and unambiguous language of 49 USC 14504(c)(2)(B)(iv)(III).

The dissenting opinion in *Yellow Transportation (on remand, supra,* in the Michigan Court of Appeals, saw no ambiguity in 49 USC 14504(c)(2)(B)(iv)(III), finding that the plain language of the statute was controlling, noting that there was nothing in the Michigan Supreme Court's opinion or this Court's opinion that changes that result. 257 Mich App 618. The dissent reasoned that, "if the ICC interpretation of ISTEA is contrary to the plain language of the statute and unworthy of deference, then the majority's affirmance of the ICC's interpretation of the unambiguous ISTEA is erroneous." *Id.* Because the phrase "collected or charged as of November 15, 1991" is "obviously clear on its face" the dissent then, 257 Mich App 618-620 reaffirmed and republished its earlier dissent, which stated, in pertinent part:

> I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute, and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.
>
> The primary goal of statutory interpretation is to ascertain and give effect to its legislative purpose. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc v City of Warren*, 210 Mich App 304, 307; 532 NW2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v Thrasher*, 196 Mich App 320,

323; 493 NW2d 457 (1992), aff'd 446 Mich 61; 521 NW2d 214 (1994).

The pertinent language in 49 USC 11506(c)(2)(B)(iv)(III) [49 USC 11504(c)(2)(B)(iv)(III)] provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include November 15, 1991. This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra*.

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning, and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996). Accordingly, I would read "fee . . . that such

State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state(for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 USC 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

As correctly noted by the dissent, there is no ambiguity in the federal statute. Applying the plain and ordinary meaning of the statute means that Michigan's fees can be set aside only if they were not "charged or collected as of November 15, 1991." The majority opinion issued by the Court of Appeals in *Yellow Freight v Michigan,* 231 Mich App at 199 acknowledged both that the fees were charged to Yellow Freight and were collected from Yellow Freight prior to November 15, 1991. ("Plaintiff sent, and the state received, the fees for 1992 before November 15, 1991"). This acknowledgment was re-affirmed by the Court of Appeals on remand, 257 Mich App at 606. Despite the acknowledgement of these two controlling facts, either one of which is sufficient to satisfy the criteria set forth in 49 USC

14504(c)(2)(B)(iv)(III), the majority opinion in *Yellow* concluded the phrase "charged or collected as of November 15, 1991" is not clear. 231 Mich App at 201, and July 22, 2003 Opinion on remand, 257 Mich App at 613. As noted by the dissent, "The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value." 231 Mich App at 210; 257 Mich App at 619. Indeed, by failing to adhere to the clear and unambiguous language of the statute, the Michigan Court of Appeals has violated a cardinal rule of statutory construction that counsels judicial construction is not permitted where the language of the statute is clear and unambiguous. *Chevron U. S. A., supra*. Aids to interpretation should be used only to resolve ambiguity and not to create it.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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Dated: July, 2004

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Order
Entered: April 9, 2004

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

124513

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,
Plaintiffs-Appellees,

v

SC: 124513
COA: 208346
Ct of Claims: 96-016473-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,
Defendants-Appellants.
_____/

On order of the Court, the application for leave to appeal the August 5, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Markman, J., dissents and states as follows:

I would grant leave to appeal to consider whether the fees plaintiff sent, and the state received, before November 15, 1991, were "collected or charged as of November 15, 1991."

49 USC 11506(c)(2)(B)(iv)(III) (1994), recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999).

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 9, 2004 /s/

Deputy Clerk

STATE OF MICHIGAN

COURT OF APPEALS

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,	UNPUBLISHED August 5, 2003
Plaintiffs-Appellants,	
v	No. 208346 Court of Claims
STATE OF MICHIGAN DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,	LC No. 96-016473-CM
Defendants-Appellees.	
	ON SECOND REMAND

Before: Fitzgerald, P.J., and White and Saad, JJ.

PER CURIAM.

This case is now before us for the third time. *Schneider Nat'l Carriers, Inc v Michigan,* Court of Claims No. 96-016473-CM, November 24, 1997 (*Schneider I*), aff'd *Schneider Nat'l Carriers, Inc v Michigan,* unpublished opinion per curiam of the Court of Appeals, issued May 14, 1999 (Docket No. 208346) (*Schneider II*), vacated after abeyance on the basis of *Yellow Freight System, Inc v Michigan,* 464 Mich 21, 33; 627 NW2d 236 (2001), and remanded for reconsideration 464 Mich 866 (2001), on remand *Schneider Nat'l Carriers, Inc v Michigan (On Remand),* 247 Mich App

716; 637 NW2d 838 (2001) (*Schneider III*), vacated and remanded 468 Mich 862; 659 NW2d 228 (2003). On second remand, the Michigan Supreme Court has directed us to reconsider this matter in light of the United States Supreme Court's recent decision in *Yellow Transportation, Inc v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002),[1] and to reconsider other preserved arguments of the parties not directly addressed by the Michigan Supreme Court or the United States Supreme Court. 468 Mich 862. We are further directed to address the impact, if any, on this matter of certain representations made by the Solicitor General, in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra*. 468 Mich at 862-863.

On the same date that the Michigan Supreme Court issued its second remand order in this case, it issued a virtually identical remand order in the affiliated *Yellow Freight* case, directing that panel of this Court to address the same issues on remand. *Yellow Freight System, Inc v Michigan*, 468 Mich 862 (2003). On July 22, 2003, the *Yellow Freight* panel issued its majority and dissenting opinions on remand. *Yellow Transportation, Inc v Michigan*, ___ Mich App ___; ___ NW2d ___ (Docket No. 194703, issued 7/22/03) (*Yellow Transportation V*[2]). After reviewing Justice O'Connor's opinion in *Yellow Transportation IV*, the majority concluded that its initial decision in *Yellow Freight System, Inc v Michigan*, 231 Mich App 194; 585 NW2d 762 (1998) (*Yellow Freight II*), "stands on substantially stronger ground," leading it to reaffirm that portion of the opinion addressing the question whether the registration fees plaintiff paid to the state in advance for the 1992 registration year were "collected or

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[1] Yellow Freight System, Inc., became Yellow Transportation, Inc., in January 2002.

[2] Adopting the opinion numbering system employed in earlier *Yellow Freight* opinions, the United States Supreme Court's opinion is designated as *Yellow Transportation IV*, and this Court's most recent opinion on remand is designated as *Yellow Transportation V*.

charged as of November 15, 1991," in accordance with 49 USC 11506(c)(2)(B)(iv)(III).[3] *Yellow Transportation V*, slip op at 5-7.

The *Yellow Transportation V* panel also addressed, in Part III of its majority opinion, the impact of representations made by the Solicitor General in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation IV*, and determined that the representations have no impact on the issue presented. *Yellow Transportation V, supra*, slip op 7-8.

Yellow Transportation V is controlling and resolves the dispositive issues in plaintiffs' favor in the instant case. Any remaining unresolved issues are rendered moot.

The Court of Claims' November 24, 1997, order is reversed to the extent that it granted summary disposition to defendants, and this matter is remanded to the Court of Claims for calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Helene N. White
/s/ Henry William Saad

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[3] For a comprehensive summary of the factual and procedural background of these cases, the reader is referred to *Yellow Transportation, supra*, 123 S Ct at 374-375.

Order
Entered: March 11, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

120690 & (84)

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,
Plaintiffs-Appellants,

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

v

SC: 120690
COA: 208346
Ct of Claims: 96-016473-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,
Defendants-Appellees.

_____/

By order of June 24, 2002, the application for leave to appeal from the October 19, 2001 decision of the Court of Appeals was held in abeyance pending the decision of the United States Supreme Court in *Yellow Transportation, Inc v Michigan,* (US Docket No. 01-270). On order of the Court, the decision having been issued by the United States Supreme Court on November 5, 2002, 537 US ___; 123 S Ct 371; 154 L Ed 2d 377 (2002), the application is again considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals decision and we REMAND this case to that court for reconsideration in light of

the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)], allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter or representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra,* about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. See 2001 US Briefs (Lexis) 270 at pp. 23-4 (4/5/02 *Amicus Curiae* Brief of the United States).

We do not retain jurisdiction.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 11, 2003 /s/

Deputy Clerk

STATE OF MICHIGAN

COURT OF APPEALS

SCHNEIDER NATIONAL CARRIERS, INC. SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC. and SCHNEIDER SPECIALIZED CARRIERS, INC.,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendants-Appellees.

UNPUBLISHED
May 14, 1999

No. 208346
Court of Claims
LC No. 96-016473 CM

Before: Fitzgerald, P.J., and Doctoroff, and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the Court of Claims' order granting defendants' motion for summary disposition pursuant to MCR 2.116(C) (7), (8), and (10) and denying plaintiffs' motion for partial summary disposition and alternative motion to refer the issues to the United States Department of Transportation. We reverse.

After the Court of Claims' decision in the instant case, this Court decided *Yellow Freight System, Inc v Michigan*, 231

Mich App 194, 201; 585 NW2d 762 (1998), involving the same issue. The *Yellow Freight* Court concluded

> that the agency's interpretation of the statute was reasonable. [Referring to the ICC's decision in *American Trucking Ass'n Ins -- Petition for Declaratory Order - - Single State Ins Registration,* 9 ICC2d 1184 (1993).] In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991. Plaintiff 's voluntary payment of fees not due and owing does not affect our analysis. [*Id.* at 201.]

Like the instant plaintiffs, Yellow Freight had paid more in fees to Michigan in 1992 than in 1991. It had also paid the 1992 fees before November 15, 1991. *Id.* at 198-199. In concluding that the plaintiffs in *Yellow Freight* were entitled to a refund, this Court reasoned that

> deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v General Motors Corp*, 134 Mich App 429, 432; 351 NW2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v Johnson & Johnson Vision Products, Inc,* 217 Mich App 705, 713; 552 NW2d 679 (1996), citing *Chevron USA, Inc v Natural Resources Defense Council, Inc,* 467 US 837, 844; 104 S Ct 2778; 81 L Ed 2d 694 (1984).
>
> Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15,

> 1991" denotes a period of time that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in *any* year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue . . . ." *Chevron*, *supra* at 843, n 9. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.* [*Id.* at 200-201.]

Given the resolution of this issue by *Yellow Freight*, summary disposition in favor of defendant is reversed and the case is remanded for a calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Martin M. Doctoroff
/s/ Helene N. White

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

SCHNEIDER NATIONAL CARRIERS, INC.;
SCHNEIDER TRANSPORT, INC.;
SCHNEIDER NATIONAL BULK CARRIERS, INC.;
SCHNEIDER TANK LINES, INC.;
and
SCHNEIDER SPECIALIZED CARRIERS, INC.,

OPINION AND ORDER

Plaintiffs-Claimants,

Hon. Peter D. Houk

v

File No. 96-16473-CM

STATE OF MICHIGAN,
MICHIGAN DEPARTMENT
OF TREASURY AND ITS STATE
TREASURER; MICHIGAN DEPARTMENT
OF CONSUMER AND INDUSTRY SERVICES
(FORMALLY MICHIGAN DEPARTMENT OF
COMMERCE) AND ITS DIRECTOR;
MICHIGAN PUBLIC SERVICE COMMISSION
AND COMMISSIONERS, JOHN G. STRAND,
JOHN C. SHEA, AND DAVID A. SVANDA;
AND THOMAS LONERGAN,

Defendants-Respondents.

OPINION

This matter is before the Court on Defendants'-Respondents' Motion for Summary Disposition and Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation. Having reviewed

the briefs and heard Oral Argument on June 16, 1997, the Court issues the following Opinion and Order:

Facts

The Plaintiffs-Claimants (Schneider) are international for-hire trucking companies doing business in Michigan. Schneider is requesting a refund of all fees paid under the Motor Vehicle Single State Registration System (SSRS). 49 USC 11506 *et seq,* recodified at 49 USC 14504, effective January 1, 1996. The SSRS is part of the Intermodal Surface Transportation Efficiency Act. 49 USC 101 *et seq.* Under the SSRS, states may assess interstate motor carriers a fee of no more than $10 per vehicle, not to exceed the amount that the state collected or charged as of November 15, 1991. This Opinion will reference 49 USC 11506. The corresponding parts of section 14504 are substantially the same to their counterpart in section 1506. The Court recognizes that Plaintiffs' claim for refund for fees paid in 1996 and after are pursuant to section 11504.

Under rules promulgated by the ICC at 49 CFR 1022, states entered into various reciprocity agreements. For purposes of determining reciprocity, Michigan would determine in which state a vehicle was registered. If that state had a reciprocity agreement with Michigan, the company would be assessed fees accordingly. Michigan and Illinois had such an agreement. Under Michigan's reciprocity agreements, Michigan did not charge fees for vehicles registered or "base plated" in states which did not charge fees for Michigan vehicles in interstate commerce. Under this system, Schneider vehicles were not charged cab stamp fees for vehicles base plated in Illinois, as Illinois did not charge fees for vehicles base plated in Michigan.

The ICC promulgated rules at 49 CFR 1023 whereby each motor carrier would pay all assessed fees through its home state. Each home state was required to collect and remit fees charged by other states on their behalf. The purpose of the act

was for efficiency. In expectation of the enactment of the SSRS, Michigan changed its method of determining reciprocity. The Michigan Public Service Commission decided that reciprocity was to be based on the principle place of business of a carrier rather than the state in which the vehicle was base plated. This change was effected in 1991.

For the registration year 1991, Schneider's vehicles were base plated in Illinois. Accordingly, Michigan did not charge fees to Schneider for the calender year 1991, due to the informal reciprocity agreement it had with Illinois. However, for 1992 and beyond, Michigan did charge the ten dollar ($10) fee to Schneider since Schneider's principle place of business is Wisconsin, a state which never shared reciprocity with Michigan.

Schneider filed a claim for refund for all fees paid for the years 1994-1997. The State denied all claims with the exception of an overpayment made for 1996.

Analysis

TIME BARRED

The first issue is whether Plaintiffs' claims are time barred. MCL 600.6431(1); MSA 27A.6431 requires that a plaintiff file a written notice of intention to file a claim against the state within one year after the claim has accrued. In this case, Plaintiffs' claims may not be dismissed because Defendant produced no evidence attempting to show that it was actually prejudiced. See May v Dept of Natural Resources, 140 Mich App 730; 365 NW2d 192 (1985).

SSRS

The pertinent part of the Federal Statute which governs the Single State Registration System is at 49 USC 11506(c)(2) and reads in part as follows:

(2) Specific requirements.—

(A) Evidence of certificate; proof of insurance; payment of fees.—Under amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle—

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system.-Such amended standards—

* * *

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that . . . (III) will result in a fee for each participating State that is equal to the fee not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

* * *

(C) Prohibited fees. The charging or collection

> of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce. (Emphasis added).

The statute limits the fee charged to the fee that the state charged as of November 1, 1991 with the limitation that the fee may not exceed $10.00.

Plaintiffs rely on Yellow Freight System, Inc v State of Michigan, Court of Claims No. 95-15706 CM, March 13, 1996, for its claim of refund. Yellow Freight was granted summary disposition and a refund of SSRS fees paid for the years 1994-1996. Those fees were paid under SSRS through Yellow's base state of Kansas. The case is now on appeal to the Court of Appeals.

In Yellow Freight, the Court of Claims granted deference to the ICC's decision in American Trucking Ass'ns - Petition for Declaratory Order - Single State Insurance Registration, 9 ICC 2d 1184 (1993). The State of Michigan took the position that although no fee was charged or collected for 1991, there was a fee for 1992 that was charged and collected in 1991 prior to November 15, 1991. The State believed that, therefore, they were permitted to charge the ten dollar ($10) fee in 1994 and beyond. Yellow asserted that since no fee was charged in 1991, the State was precluded from assessing a fee.

The present issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991" relates to fees charged for the 1991 registration year or for the 1992 registration year was raised by Yellow in American Trucking. Id at 47,364. The ICC interpreted the SSRS, stating that "[w]e think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, . ." Id at 47,365. Yellow advanced the interpretation to the Court of Claims, which in turn, deferred to the ICC interpretation. Yellow, supra at 4. The result was a

refund ordered. Id. Schneider adopts this argument claiming that it is in accord with Congressional intent to freeze fees as of November 15, 1991.

The SSRS is a comprehensive regulatory scheme created under federal law. Congress has charged the ICC with its implementation. This court would normally grant deference to the statutory interpretations of the Act by the ICC. However, it is this court's opinion that the Commission erred. The question presented by Yellow to the ICC relates to which year the charged fees apply. The reply by the ICC, however, concerns the year in which the fees are to be 'charged or collected. The reply does not answer the question. The reply cannot refer to 1991 fees, as Plaintiffs interpret. This would lead to absurd results as discussed below. Even assuming that the ICC did properly address the issue presented, the only logical interpretation is that the ICC is referring to 1992 fees that are charged or collected in 1991.

This Court disagrees with the Plaintiffs' argument, that because the statutory language concerns fees charged or collected for the 1991 registration year, and that they did not pay fees in 1991, that they do not have to *ever* pay fees because the statutory language freezes the fees owed to those charged or collected as of November 15, 1991. The State collects application or renewal fees in the fall of the year for the next calender year. Defendants assert that this is done to ensure proper payment and registration for services to be provided for an entire year. The basis for determining the amount to be charged or collected from a carrier is by the location of the company's principle place of business. The fact that an individual carrier was not assessed fees one year and was assessed fees the next year is irrelevant. The determining factor is location and is not focused on the individual carrier's mere existence. This narcissistic argument produces absurd results. It is a basic rule of statutory construction carried over from common law that absurd results should be avoided. Fortunate v Dept of Transp, 449 Mich 911; 538 NW2d 669 (1995). If, for example, a carrier expands operations into the

State of Michigan after November 15, 1991, then the State will be forever precluded from assessing a fee because the State did not previously assess a fee against that carrier's vehicles. Even more absurd is the situation where a carrier was not yet in existence as of November 15, 1991. In that case, all participating states would be precluded from assessing fees against that carrier because it never paid fees to any state prior to November 15, 1991. These possible results are contrary to the legislative intent of creating a fee system for the filing of proof of insurance.

In summary, the interpretation that the effective date of November 15, 1991 pertains to fees collected for the 1991 calendar year is contrary to the plain meaning of the statute. The proper interpretation is that the SSRS applies to fees charged and collected for the 1992 calender year. Therefore, Schneider is responsible for the fees as their principle place of business is Wisconsin, a state without reciprocity with Michigan.

NOTICE

The notice issue is of limited applicability to this case as the court does not defer to the above ICC interpretation. The notice issue is applicable, however, to Defendants' Tenth Amendment argument.

Defendants argue that the ICC declaratory order decision in American Trucking is not binding because the State did not receive adequate notice of the proceedings, the issues did not involve Michigan issues and, since Michigan did not participate, the ICC did not have the benefit of Michigan policy. Plaintiffs argue that an agency need not conduct an individualized hearing and adjudication before issuing a declaratory ruling under 5 USC 554(e).

An "'order' means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but

including licensing." 5 USC § 551(6). "'Adjudication' means agency process for the formulation of an order." 5 USC § 551(7). Section 554 which applies in all cases of adjudication with six exceptions that are not applicable here, provides that persons entitled to notice of an agency hearing shall be timely informed of the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; and the matters of fact and law asserted. The Interstate Commerce Commission is bound by requirements of reasonable notice proscribed in 5 USC §54. See North Alabama Exp, Inc v US, 585 F2d 783 (CA 5 1978).

In the instant case, the ICC published notice of the declaratory order proceeding in the Federal Register. 58 FR 48673 (1993). The notice stated that:

> The Commission is acting in view of evidence suggesting that States may be in violation of 49 CFR 1023.2(a), 1023.4(c)(4), and 1023.4(g). This action is part of the Commission's continuing effort to clarify its regulations and facilitate smooth operation of the registration system. The Commission is providing interested persons an opportunity to participate in the proceeding and is inviting their comments. This published notice was sufficient to inform the Defendants and all interested parties of the declaratory proceeding and fully complies with 5 USC §554(b), the notice requirement for adjudications.

10TH AMENDMENT

Defendants assert that the ICC finding that "[i]t is inconsistent with the statute for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system", violates the Tenth Amendment of the United States Constitution. American Trucking, Supra at 47,366. Defendants suggest that if the Federal Government

forces the States to enter into, alter or repeal a compact, it is a violation of the 10th Amendment.

The United States Court of Appeals in National Association of Regulatory Utility Commissioners v Interstate Commerce Utility Commission, 41 F3d 721 (DC Cir 1994), opined that it is irrelevant whether the Legislature focused on reciprocity and held that the ICC properly determined in American Trucking that, under the ISTEA amendments, participating states could not collect fees under new systems in excess of those charged and collected under pre-existing reciprocity agreements.

The Michigan system is consistent with National Association. Michigan merely changed its method of determining which carrier's vehicles were to be assessed fees from the base plating method to the principle place of business of the carrier. Michigan has always, and continues to share reciprocity with Illinois. Likewise, Michigan does not, nor has it ever shared reciprocity with Wisconsin. Michigan continues to charge $10 per vehicle under the ISTEA amendments as it did under the former system. Therefore, the $10 fee charged is not in excess of a pre-existing reciprocity agreement. Neither the ICC's statements concerning reciprocity or the SSRS itself run contrary to the 10th Amendment.

COMMERCE CLAUSE VIOLATION

The parties agree that the underlying statutory authority that allows Michigan to collect fees pursuant to the SSRS is MCL 478.7(4); MSA 22.565(l)(4). That section of the statute reads in relevant part that "[t]he annual fee levied-on each interstate or foreign motor vehicle operated in this state and licensed in another state or providence of Canada shall be $10.00. . . Plaintiff argues that this Section is not consistent with the SSRS and therefore violates the Commerce Clause. Specifically, Plaintiff argues that section 7 authorizes collection of fees for registration of vehicles, while the SSRS at 49 USC 11506(2)(A)(ii) only authorizes collection of fees "to file satisfactory proof of required insurance or qualification as

a self-insurer." Plaintiff further claims that this inconsistency is not in accordance with 49 USC 11506(c)(2)(B)(iv) of the SSRS and pursuant to 49 USC 11506(c)(2)(C), creates a burden on interstate commerce.

A thorough reading of MCL 478.7; MSA 22.565(1) suggests that the statute authorizes fees other than for vehicle registration. MCL 478.7(1) does require the carrier to pay the necessary registration fees before operating the vehicle in interstate commerce. However, 1933 PA 254 as amended by 1989 PA 221 grants the Michigan Public Service Commission broad powers in the arena concerning our public highways and its use by interstate motor carriers. The purpose of the act is to:

> [p]romote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles operated by carriers of property for hire upon or over such highways; . . . to give the [Michigan Public Service] [C]ommission jurisdiction and authority to fix, alter, regulate, and determine rates, fares, charges, classification, and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares, and charges .... Id.

A copy of a Public Service Commission procedures manual instructs the Commission on how to collect fees pursuant to MCL 478.7(4); MSA 478.7(1)(4). The manual states that "[t]hese fees shall be for filing and maintaining proof of insurance. No other fees shall be collected or assessed either directly or indirectly." MICHIGAN PUBLIC SERVICE COMM'N, SINGLE STATE REGISTRATION SYSTEM PROCEDURES MANUAL (Revised July 1, 1994), p 14. Obviously, fees for the purpose of filing and maintaining proof of insurance is consistent with the stated purpose of the act to promote safety of the public highways. In addition, the broad grant of authority allows the commission to charge and collect fees to further the purpose of the act.

In summary, the legislature implicitly granted the commission the authority to charge and collect fees consistent with the SSRS. The procedures manual is direct evidence that the commission properly assumed that responsibility.

42 USC 1983

For the stated reasons, the Plaintiffs have failed to state a violation of a constitutional right or a federal law. Such a violation would allow a 42 USC 1983 claim. However, Plaintiffs have failed to demonstrate a situation were such a claim exists. Therefore, this claim must be dismissed as to all Defendants.

ORDER

THEREFORE, IT IS ORDERED that for the above stated reasons that Defendants'-Respondents' Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that for the above mentioned reasons, Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation are **DENIED.**

Dated: November 24, 1997

/s/
Hon. Peter D. Houk
Court of Claims Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above **OPINION AND ORDER** upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on November 24, 1997.

/s/
Ann M. Baird
Judicial Assistant

cc: Ronald J. Mastej
Donald L. Keskey
Judith I. Blinn

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

SCHNEIDER NATIONAL CARRIERS, INC.;
SCHNEIDER TRANSPORT, INC.;
SCHNEIDER NATIONAL BULK CARRIERS, INC.;
SCHNEIDER TANK LINES, INC.; AND
SCHNEIDER SPECIALIZED CARRIERS, INC.

Plaintiffs-Claimants, Case No. **96-16473 CM**
HONORABLE PETER D. HOUK

v

STATE OF MICHIGAN; MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER; MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES (FORMERLY MICHIGAN DEPARTMENT OF COMMERCE) AND ITS DIRECTOR; MICHIGAN PUBLIC SERVICE COMMISSION AND COMMISSIONERS, JOHN G. STRAND, JOHN C. SHEA, AND DAVID A. SVANDA; AND THOMAS LONERGAN,

Defendants-Respondents.

_____/

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Attorney for Plaintiffs
1400 Buhl Building
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6545 Mercantile Way, Suite 15
Lansing, Michigan 48911
Telephone: (517) 334-7650
Fax: (517) 334-7655

AMENDED AFFIDAVIT OF THOMAS R. LONERGAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Thomas R. Lonergan, having been duly sworn and deposed states as follows:

1. I am presently and was at all times pertinent to the above action since 1985, employed by the Michigan Public Service Commission in the capacity as Director of the Motor Carrier Regulation Division.

2. I have personally reviewed the Plaintiffs' Complaint filed in the above action and am familiar with the contents of same.

3. I have reviewed Plaintiffs' Motion for Summary Disposition, Brief in Support of Same and Response to Defendants' Motion for Summary Disposition and accordingly submit the additional following facts.

4. By the end of the summer of 1991, Michigan had fully implemented a change in reciprocity based upon a carrier's home location, rather than the previous reciprocity basis utilizing the state where each vehicle was base-plated. The change in the basis of establishing reciprocity occurred several months before the dispositive date in the SSRS of November 15, 1991. Michigan collected all fees from Plaintiffs based upon the revised home-state basis of reciprocity during the period September 23, 1991 through October 10, 1991, as part

of the annual renewal process, significantly ahead of the November 15, 1991 cutoff date in the SSRS.

5. If Plaintiffs were to prevail in this case, the effect would be to ignore the SSRS requirement that fees collected be no greater than those "charged or collected as of November 15, 1991."

6. If Plaintiffs prevailed, the adverse impact upon Michigan, the industry, other states, and the purposes of the SSRS statute would be substantial. The effect of such a decision would be to require Michigan to discontinue basing reciprocity in accord with the location of the home office of each carrier, and to revert to its former basis of determining reciprocity in accord with the state in which each carrier's vehicle was base plated. This would greatly complicate the administration of the SSRS for all states and motor carriers, because:

a. The states which participate in the SSRS would have to voluntarily agree to operate a dual system of SSRS registration. They would have to notify carriers with vehicles that operate in Michigan to submit documentation regarding the various states in which each of these vehicles were base plated. They would also have to verify which states of vehicle registration have reciprocity with Michigan. It is unlikely that all or many of the states would agree to operate this dual system.

b. For the period 1994-1997, motor carriers would be required to submit registrations or other pertinent documentation to Michigan or the base state verifying vehicle registration for the preceding four years in addition to all registration requirements under the SSRS.

c. In Michigan, there are in excess of 2,700 carriers and 500,000 vehicles registered. Nationally, there would be tens of thousands of carriers and millions of vehicles.

Accordingly, the notification procedure would be burdensome and expensive.

d. In Michigan, or the other base states, it would be necessary to review each state's monthly records to determine the names of carriers to be contacted.

e. Upon receipt of the data involving states in which carriers had vehicles registered, all base states would have to review the records and documentation provided and then refund or bill in accord with the change in the law pertinent only to Michigan.

f. A change in the basis of establishing reciprocity in Michigan would result in a system which was incongruent with the systems in all other participating states.

g. For all future years, states would have to maintain dual procedures: (1) for all states that afford reciprocity on the basis of location of carriers; and (2) for vehicles that travel in Michigan (as the Court would be requiring a different reciprocity basis, according to where each vehicle was base-plated).

h. Each participating state would have to separately determine the fees for those vehicles in accord with the location in which the vehicles are base plated with respect to their Michigan authority. Such computations may have to be performed manually.

i. If the states did not agree, Michigan would be the only state among the original participating states in SSRS that would not receive payments from the $10.00 fee. Accordingly, the services the state provides for the fee might have to be eliminated.

7. A change in the basis of establishing reciprocity in accord with the American Trucking decision would negate the concept of uniformity contrary to the purposes of the SSRS and

the implementing regulations. It would also negate the SSRS purposes to simplify recordkeeping and to preserve state revenues.

8. Fees collected from motor carriers are a valid business expense which are generally factored in as a component in rates charged to customers, and are a business expense subject to tax deductions. In accord with common business practice, Plaintiffs' payment of fees have most likely been included in Plaintiffs' business costs and prices charged customers. If a refund were required, it is unlikely that Plaintiffs would pass refunds through to their customers.

9. Motor carrier SSRS registrations in Michigan of interstate operations must include a copy of their proof of liability insurance. (See example included as Exhibit 1).

10. Attached hereto as Exhibit 2 is my letter of December 12, 1996 verifying the refund of excess fees that Schneider mistakenly paid to Michigan for 1996.

11. It has been Michigan's long standing practice to collect renewal fees in the fall of each year for registration of the upcoming calendar year, as is the practice with most, if not all, other states. In fact, the SSRS requires motor carriers to register in the fall prior to the calendar year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming calendar year. A copy of the relevant sections of the SSRS manual are attached hereto and identified as Exhibit 3.

Further affiant sayeth not.

/s/

Thomas R. Lonergan, Director
Motor Carrier Regulation Division
Michigan Public Service Commission

Subscribed and sworn to before me this
5th day of May, 1997.

/s/

Pamela A. Cabic, Notary Public
Eaton County, Michigan
My Commission Expires: 2/4/98

EXHIBIT 1

It is estimated that an average of ¼ burden hour per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

MOTOR CARRIER AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

filed (In Triplicate) with:
INTERSTATE COMMERCE COMMISSION
INSURANCE BRANCH
WASHINGTON, D.C. 20423

Received:
Date_____

I.C.C. DOCKET NO.
MC_____
(or FF_____)

Approved by OMB
3120-0081
Through 10-31-95

This is to certify that the OLD REPUBLIC INSURANCE COMPANY (name of company) (hereinafter called Company) of BOX 789, 414 W. PITTSBURGH ST., GREENSBURG PA, USA 15601-0789 (home office address of company) has issued to ELITE MOTOR FREIGHT LTD. (name of motor carrier) of 7151 FIR TREE DRIVE, MISSISSAUGA, ONTARIO L5S 1G5 (address of motor carrier) insurance under terms described on the back of this form to provide coverage for the FULL SECURITY LIMITS required under Section 1043.2(b)(1) or Section 1043.2(b)(2) of Title 49 of the Code of Federal Regulations.

Effective from DEC. 8/1996 (12:01 a.m., standard time at the address of the Insured as stated In said policy or policies) and continuing until cancelled as provided in the rules and regulations under Section 10927 of Title 49 of the United States Code.

Signed at BOX 557, 100 KING STREET WEST, HAMILTON, ONTARIO L8N 3K9. Date DEC. 6, 1996

OLD REPUBLIC INSURANCE COMPANY

Insurance Company Policy No. T20598A

/s/

EXHIBIT 2

John Engler, Governor

6545 Mercantile Way
PO Box 30221
Lansing, MI 48909-7721

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

517-334-6446

Commissioners

John G. Strand
John C. Shea
David A. Svanda

December 12, 1996

Mr. Ronald J. Mastej
Eames Wilcox
1400 Buhl Building
Detroit, MI 48226-3602

Dear Mr. Mastej:

Re: Schneider National Carriers, Inc., et al

This is to inform you that I have directed my staff to initiate a refund to Schneider of 1996 SSRS fees for vehicles for which MPSC decal fees have also been purchased. It is not within my authority to provide refunds for prior years.

Sincerely,

/s/
Thomas R. Lonergan

cc: Judith Blinn

EXHIBIT 3

G. The registration year will be a calendar year.

H. Fees collected under this system will not be prorated for partial year operations.

I. Any changes to the authority granted by the ICC after the initial registration in the registration state will be filed with the registration state. The registration state may waive the filing of any authority granted by the ICC if that grant of authority certificate or permit is longer than 20 pages in length. When the waiver is granted in writing, the motor carrier shall provide a copy of the portion of the Commission order which shows the service date and order section and shall prepare and file a synopsis of the authority granted within the body of the order.

J. A registrant may request in writing that its registration be cancelled. The registration state will immediately cancel such registration and give written notice of cancellation to the registrant. The notice of cancellation will show the effective date of cancellation and shall be mailed to the registrant requesting such cancellation. Each registration state shall transmit information concerning the motor carrier's full name, business address, MC number and DOT number for each carrier requesting cancellation of registration to all affected jurisdictions participating in the program when the next monthly fee accounting transmittal is required to be submitted to each registration state. No fees shall be refunded.

IV. CHANGE OF REGISTRANT'S PRINCIPAL PLACE OF BUSINESS

A. A motor carrier may not change its registration state unless it changes its principal place of business or its registration state ceases or commences participation in the program.

B. For the purposes of this program, the carrier's principal place of business for registration selection will be the business address the motor carrier indicated on the order issued by the Commission or as otherwise noticed to the Commission pursuant to an address change.

C. When a registrant changes its principal place of business to another state participating in this program before the annual registration period of August 1 to November 30, the registrant may move its registration to the new registration state at the next registration period or retain registration in the current registration state for no more than one additional year.

D. When a registrant changes its principal place of business to another participating state, the registrant shall notify the new registration state and the current registration state within 30 days after it has made its selection.

E. When the registrant changes its principal place of business and selects a new registration state, the motor carrier shall refile in the new registration state the application, a copy of its interstate operating authority and a copy of the designation of agent(s) for service of process. Proof of insurance must be filed in the new registration state showing the change of business address of the registrant.

F. When the registrant changes its principal place of business to a state that it not eligible to participate in this program, the registrant shall retain the current registration state designation for registration purposes and file notice of business address change along with a new insurance filing in its registration state.

G. If a registrant changes its principal place of business <u>during a registration period</u> and that principal place of business change affects its reciprocity status to now afford it reciprocity from payment of fees, the registrant shall not be allowed any credit or refund of prior fees paid for that

registration period. The new principal place of business shall be used by the current registration state for determination of proper payment of future fees or waiving of those fees for any additional states of travel or additional equipment added.

H. The motor carrier must give notice of its change in registration state to its insurer as soon as practicable.

V. REGISTRATION PROCESS – Application Form

A. The applicant shall file annually between the 1st day of August and the 30th day of November of the year preceding the registration year an application for registration of all ICC regulated interstate operations with the registration state only. The required application form to be used is attached hereto.

B. The application form must be completed in its entirety and signed by an authorized member of the company or its agent, otherwise the registration shall be considered incomplete.

C. The application must contain the full name of the motor carrier. This includes all owner name(s) and any d/b/a (doing business as). This name will be verified with the name shown on the ICC certificate or permit submitted with the application. If the name on the application differs from the most recent ICC certificate or permit, the registration will be considered incomplete until the applicant provides a copy of the reentitlement from the ICC showing the change of name or amends the application form by providing written notice to the registration state.

D. The business city and business state address on the application will be verified with the ICC certificate or permit submitted with the

§ 14504. Registration of motor carriers by a State

(a) Definitions. In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) General rule. The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 [49 USCS §§ 13501 et seq.] and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) Single State registration system.

(1) In general. The Secretary shall maintain standards for implementing a system under which--

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139 [49 USCS §§ 13901 *et seq.*];

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements.

(A) Evidence of federal registration; proof of insurance; payment of fees. Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of

this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part [49 USCS §§ 13101 *et seq.*]--

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. The standards of the Secretary--

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or

identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that--

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $ 10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) Limitation on participation by States. Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

478.7 Motor carrier engaged in interstate or foreign transportation of property for compensation; registration and vehicle fees; filing record of authority; approval of application for registration of exempt operations; annual fee; reciprocal agreement; disposition of fees.

Sec. 7.

(4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Nos. 04-55, 04-57

In The Supreme Court of the United States

STATE OF MICHIGAN, ET AL.,

Petitioners,

v.

YELLOW TRANSPORTATION, INC.,

Respondent.

STATE OF MICHIGAN, ET AL.,

Petitioners,

v.

SCHNEIDER NATIONAL CARRIERS, INC., ET AL.,

Respondents.

On Petitions For Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

JOHN W. BRYANT,
Counsel of Record
NEILL T. RIDDELL
DEAN & FULKERSON
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Troy, Michigan 48084
(248) 362-1300
Counsel for Respondents

QUESTION PRESENTED

Congress in 1991 directed the former Interstate Commerce Commission ("ICC") to prescribe new and more simplified standards under which states are permitted to charge fees for registration of interstate motor carrier operations. 49 U.S.C. §11506(c)(1) It specified that these new standards "shall establish a fee system" that "will result in a fee for each participating State that is equal to the fee * * * that such State collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III). In interpreting these standards, the ICC specifically ruled that the term "fee * * * collected or charged as of November 15, 1991" would be interpreted to refer to the fees which a state was collecting or charging to allow operations on November 15, 1991, rather than to fees which a state might have announced and begun to receive in advance of that date for operations during 1992.

The question presented is whether the Michigan Court of Appeals was correct in affording deference to the ICC's finding under principles announced by this Court in *Chevron USA, Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984) and *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002).

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceedings are set forth in the case caption. Yellow Transportation, Inc., Respondent in No. 04-55, is a wholly owned subsidiary of Yellow Roadway Corporation, a publicly held corporation. The Respondents in No. 04-57, Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc.; and Schneider Specialized Carriers, Inc. are wholly owned subsidiaries of Schneider National, Inc. No publicly held corporation owns ten percent or more of the stock of Schneider National, Inc.

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RESPONSE TO PETITIONS FOR WRIT OF CERTIORARI

Respondents Yellow Transportation, Inc. ("Yellow"); Schneider National Carriers, Inc.; Schneider Transport, Inc.; Schneider National Bulk Carriers, Inc.; Schneider Tank Lines, Inc.; and Schneider Specialized Carriers, Inc.; (collectively, "Schneider") submit their joint[1] Brief in Opposition to the Petitions for Writ of Certiorari in Nos. 04-55 and 04-57.

OPINIONS AND ORDERS BELOW

No. 04-55

1. *Yellow Freight System, Inc. v. State of Michigan*, Michigan Court of Claims, March 13, 1996 ("*Yellow Freight I*") (Yellow Pet. App. 26a-29a)

2. *Yellow Freight System, Inc. v. Michigan*, 231 Mich. App. 194, 585 N.W.2d 762 (1998) (Resp. App. 22b-39b) ("*Yellow Freight II*") (affirming *Yellow Freight I*)

3. *Yellow Freight System, Inc. v. Michigan*, Michigan Court of Appeals, November 18, 1998 (denying rehearing)

4. *Yellow Freight System, Inc. v. Michigan*, 464 Mich. 21, 627 N.W.2d 236 (2001) ("*Yellow Freight III*") (reversing *Yellow Freight II*)

[1] Because the Petitions and underlying issues in Nos. 04-55 and 04-57 are virtually identical, Respondents have elected to file a joint response. Appendix references to "Yellow Pet. App." and "Schneider Pet. App." will refer to Petitioners' Appendices in Nos. 04-55 and 04-57 respectively.

5. *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002) (Resp. App. 40b-55b) ("*Yellow Transportation IV*") (reversing *Yellow Freight III*)

6. *Yellow Freight System, Inc. v. Michigan*, 468 Mich. 862, 659 N.W.2d 229 (Table) (2003) (vacating *Yellow Freight III*)

7. *Yellow Transportation, Inc. v. Michigan*, 257 Mich. App. 602, 669 N.W.2d 553 (2003) (Yellow Pet. App. 3a-21a) ("*Yellow Transportation V*") (reaffirming *Yellow Freight II*)

8. *Yellow Transportation, Inc. v. Michigan*, 469 Mich. 1026, 677 N.W.2d 331 (2004) (Yellow Pet. App. 1a-2a) (denying leave to appeal)

No. 04-57

1. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Claims, March 13, 1996 (Schneider Pet. App. 11a-22a) ("*Schneider I*")

2. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, May 14, 1999 (Schneider Pet. App. 8a-10a) ("*Schneider II*") (reversing *Schneider I*)

3. *Schneider National Carriers, Inc., et al. v. Michigan*, 464 Mich. 867, 631 N.W.2d 343 (2001) (vacating *Schneider II* and remanding for reconsideration in light of *Yellow Freight III*)

4. *Schneider National Carriers, Inc., et al. v. Michigan*, 247 Mich. App. 716; 637 N.W.2d 838 (2001) ("*Schneider III*") (deciding issues not addressed in *Schneider II*)

5. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, December 7, 2001 (denying rehearing of *Schneider III*)

6. *Schneider National Carriers, Inc., et al. v. Michigan*, 468 Mich. 862, 659 N.W.2d 228 (2003) (Schneider Pet. App. 6a-7a) (vacating *Schneider III*)

7. *Schneider National Carriers, Inc., et al. v. Michigan*, Michigan Court of Appeals, August 5, 2003 (Schneider Pet. App. 3a-5a) ("*Schneider IV*") (reaffirming *Schneider II*)

8. *Schneider National Carriers, Inc., et al. v. Michigan*, 469 Mich. 1026, 677 N.W.2d 331 (2004) (Schneider Pet. App. 1a-2a) (denying leave to appeal)

STATEMENT OF THE CASE

These cases involve an interpretation of an almost infinitesimally minor detail of a regulatory statute by the former Interstate Commerce Commission ("ICC"), with which the State of Michigan and its regulatory agency, the Michigan Public Service Commission ("MPSC"), have elected to disagree. No other state has followed Michigan's interpretation, which was accepted by only two of the 17 judges who considered these cases in the Michigan courts, and there have been no other cases involving this issue.

The statutory provision in question, 49 U.S.C. §11506(c)(2)(B)(iv)(III),[2] provides that a state may assess a fee for certain commercial motor vehicle registrations only if that fee is "equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November

[2] Recodified as 49 U.S.C. §14504 effective January 1, 1996. References in this brief are to the original version.

15, 1991." In the course of its proceeding interpreting and implementing this statute at the direction of Congress, the ICC specifically addressed how it would apply this language to a situation in which a state was charging no fees for operations on November 15, 1991 itself but prior to that date had announced and begun to collect fees in advance for periods beginning after November 15, 1991.

Congress not surprisingly had been silent on this question in enacting the statute. The ICC, however, concluded that the statutory language should be read to base the fee limits on fees being charged and collected for operations on the November 15, 1991 determination date rather than on fees for future periods which states had begun to receive in advance of that date. *American Trucking Associations – Petition for Declaratory Order – Single State Insurance Regulation*, 9 ICC 2d 1184, 1192, 1195 (1993) (14b, 18b). Michigan, however, refuses to defer to this interpretation under the *Chevron*[3] doctrine, notwithstanding the clear indication to the contrary provided by this Court's prior opinion[4] in this very case issued less than 20 months ago.

1. Regulatory Background

The issue in these cases arises from actions by the Respondent motor carriers to obtain refunds of motor vehicle registration fees improperly collected by the MPSC. At all times pertinent to this litigation, Respondents have

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[3] *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[4] *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002) (40b-55b).

been for-hire motor carriers performing transportation in interstate commerce under certificates and permits issued by the ICC and its successors.[5] For years prior to 1994, Congress through a predecessor version of 49 U.S.C. §11506 had permitted states to require registration of interstate carrier certificates or permits as long as that registration complied with standards issued by the ICC, including a maximum fee[6] of $10 per vehicle. Carriers paid such fees separately to each state and were issued individual "bingo stamps" for each vehicle, to be placed on a multi-state "bingo card" carried in the vehicle cab.

For calendar year 1991, the system which Michigan had established included a reciprocity arrangement for registering vehicles which were commercially plated in Illinois. As stated by the affidavit of Michigan's most responsible official in this area, Thomas Lonergan, Michigan in 1989 began a policy under MCL 478.7(4) of not charging registration fees to carriers with vehicles registered in states which did not charge Michigan-based vehicles a fee. (Yellow Pet. App. 32a) Illinois was one of

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[5] Effective January 1, 1996, the U.S. Department of Transportation assumed the duties formerly performed by the ICC, including administration of the former ICC regulations at 49 C.F.R. ICC Termination Act of 1995, Pub. L. 104-88, December 29, 1995, 109 Stat. 803, §204; 49 U.S.C. §702. Within that agency, these duties were assumed initially by the Federal Highway Administration and, beginning in 2000, by the Federal Motor Carrier Safety Administration. 49 U.S.C. §113 (Supp. V 1999)

[6] Michigan's vehicle registration fee for interstate operations is set forth at Mich. Comp. Laws 478.7, enacted in 1988. Under Mich. Comp. Laws 478.7(4), the annual fee for each vehicle operated in the state under Mich. Comp. Laws 478.7 is $10. The MPSC is permitted to enter into reciprocal agreements with other states which do not charge fees to vehicles licensed in Michigan and is permitted to waive the $10.00 fee in such situations. Yellow Pet. App. 48a.

these states. In calendar years 1990 and 1991, carriers such as Yellow and Schneider were not charged vehicle registration fees for any of their vehicles which were commercially plated in Illinois. [Yellow Pet. App. 32a; Affidavit of Thomas R. Lonergan, November 21, 1996, in *Schneider I*, ¶7(c)] For the registration year beginning February 1, 1992, however, Michigan changed its policy and announced that carriers such as Yellow and Schneider would be charged $10 for each of their Illinois-based vehicles.[7]

On December 18, 1991, the President signed into law the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 2146, December 18, 1991 ("ISTEA"). Section 405 of ISTEA modified 49 U.S.C. §11506 to create a streamlined and more efficient system ("Single State Registration System" or "SSRS") for registering vehicles of interstate for-hire motor carriers. The SSRS modifications replaced the former multiple-payment "bingo stamp" system with a "single state" filing concept. Under this system, carriers submitted filings and payments to their home states which covered vehicle registrations and fees for all states in which they operated. The registration states then sent registrations and fees to all other states. The statute provided that states could assess

[7] Michigan made this change by altering its methodology for determining reciprocity. The specific alteration involved applying reciprocity exemptions based on the states in which carriers such as Yellow and Schneider maintained their principal places of business (Kansas in Yellow's case, Wisconsin in Schneider's case) rather than the states in which the vehicles themselves were commercially plated. This change had the effect of eliminating reciprocity fee exemptions for vehicles commercially plated in fee-exempt states such as Illinois if the owners of such vehicles maintained their principal places of business in non fee-exempt states such as Kansas or Wisconsin.

a fee only if the fee was "equal to the fee, not to exceed $10.00 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III) The statute indicated that the charging of any fees not established by the ICC under SSRS would be deemed a "burden on interstate commerce" so as to be contrary to the Commerce Clause of the U.S. Constitution.[8] 49 U.S.C. §11506(c)(2)(C) (*Yellow Transportation IV* at 43b) Congress specifically directed the ICC to develop standards and regulations to implement the new system. 49 U.S.C. §11506(c)(1)

The ICC's initial proceeding concerning standards for vehicle registration under ISTEA was *Single State Insurance Registration*, 9 ICC 2d 610 (1993). ("*Single State*") Michigan participated as a party in that case. *Single State* at 9 ICC 2d 641. The ICC codified certain of its implementing standards in revised regulations issued at 49 C.F.R. §1023. Other standards merely were expressed in the body of the *Single State* decision. Later that same year, the ICC opened a supplemental notice and comment proceeding and issued additional standards for applying ISTEA. *American Trucking, supra*, 9 ICC 2d 1184 (3b-21b)

As noted above, the decision in *American Trucking* is particularly significant to this case because it addresses the substantive issue of this petition. As indicated previously, carriers such as Yellow and Schneider which operated vehicles commercially plated in Illinois were paying no fees to Michigan for operation of those vehicles in Michigan as of the determination date under ISTEA of November 15, 1991. Michigan, however, had announced

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[8] *U. S. Constitution, Article I, Section 8, Clause 3.*

increased 1992 fees for such vehicles prior to that date and had begun to accept advance payments of those fees.

After learning that Michigan intended to claim that its announcement and advance collection of future fees made such fees "collected or charged as of November 15, 1991" within the meaning of ISTEA, Yellow submitted the fee calculation question to the ICC through comments in the *American Trucking* proceeding. In those comments, Yellow specifically raised the issue of whether the statutory language limiting fees to those "collected or charged as of November 15, 1991" related to the fees charged for actual operations on that date, as opposed to fees which states might have begun to collect on that date for the succeeding year. The ICC's decision described Yellow's position as follows:

> Yellow raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10.00 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane. *American Trucking*, at 9 ICC 2d 1192. (14b)

The ICC responded to Yellow's position as follows:

> *Other matters.* Yellow has raised the issue of whether the statutory language concerning the

> "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find. *American Trucking* at 9 ICC 2d 1195. (18b)

The ICC thus held that a state such as Michigan which had charged fees of zero for operations of particular categories of vehicles on November 15, 1991, was required to continue to charge zero fees for those vehicle categories under the ISTEA statute, even though prior to November 15, 1991, it had announced higher fees for the following year and begun to accept voluntary payments of those fees. This is the precise finding which Yellow and Schneider have sought to apply in these cases.

2. Litigation History

As a result of the ISTEA legislation and the ICC's subsequent implementation actions, Yellow and Schneider made specific inquiries to confirm that vehicles commercially plated in Illinois could be registered for Michigan operations without a fee payment, in the same manner as had been the case for calendar year 1991. They were told, however, that Michigan insisted on a full $10.00 per vehicle fee for Illinois-based vehicles if carriers' principal places of business were located in non-exempt states. Yellow and Schneider accordingly submitted such payments for Michigan to their base states (Kansas or Wisconsin) indicating that such payments were under protest. They subsequently filed verified notices of claim with the Michigan Court of Claims with respect to these fee payments and

then filed Complaints with the Michigan Court of Claims seeking a refund and future relief.

In the Yellow litigation, following cross motions for summary disposition, the Michigan Court of Claims on March 13, 1996 issued its opinion in *Yellow Freight I* granting summary disposition for Yellow. The Court of Claims opinion was based on its finding that it was required to follow the ICC's resolution of the fee issue under the ISTEA as set forth in *American Trucking*. (Yellow Pet. App. 28a-29a) On Michigan's appeal, the Michigan Court of Appeals issued its opinion in *Yellow Freight II* affirming the Michigan Court of Claims. (22b-39b)

In the Schneider litigation, again following cross motions for summary disposition, the Michigan Court of Claims on November 24, 1997 issued its opinion in *Schneider I* granting summary disposition for Michigan. (Schneider Pet. App. 21a) On Schneider's appeal, the Michigan Court of Appeals issued its opinion in *Schneider II* reversing the Michigan Court of Claims on the basis of *Yellow Freight II*. (Schneider Pet. App. 9a-10a)

Michigan filed applications for leave to appeal both cases to the Michigan Supreme Court. Leave to appeal was granted in *Yellow* and the Michigan Supreme Court issued its decision in *Yellow Freight III*. The *Yellow Freight III* decision impliedly accepted the position of the Michigan Court of Appeals in *Yellow Freight II* and *Schneider II* but rejected Yellow's claim for fee exempt status on a different basis. The *Yellow Freight III* court took the position that Michigan's non-application of its registration fees to carriers such as Yellow and Schneider as of November 15, 1991 was not required to be given continuing effect because this non-application was based on reciprocity agreements

and because the ICC had erred in giving continuing effect to such agreements. *Yellow Freight III, supra* at 464 Mich. 32. Yellow then sought and was granted certiorari culminating in this Court's opinion in *Yellow Transportation IV* on November 5, 2002.[9]

The *Yellow Transportation IV* opinion held that *Yellow Freight III* was incorrect in finding that the ISTEA language unambiguously precluded the position adopted by the ICC and advanced by Yellow. It referred extensively to the ICC opinions in *Single State* and *American Trucking* adopting standards for implementing ISTEA and found the ICC's justification for those standards reasonable. *Yellow Transportation IV* at 44b, 49b-52b. The opinion noted that although ISTEA was silent on the issue of whether or not reciprocity agreements should be considered in determining the level of fees required to be frozen, it was the ICC's proper role to resolve any ambiguities and fill in any holes in the statutory scheme. (51b) This Court accordingly ordered that the opinion in *Yellow Freight III* be reversed and that the case be remanded for further proceedings not inconsistent with the opinion in *Yellow Transportation IV.* (52b)

On remand, the Michigan Supreme Court entered orders in the *Yellow* and *Schneider* proceedings vacating

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[9] In the Schneider litigation, following the issuance of *Yellow Freight III*, the Michigan Supreme Court vacated *Schneider II* and remanded the case to the Michigan Court of Appeals for resolution of remaining issues in light of *Yellow Freight III*. The Court of Appeals decided those issues in *Schneider III*, partly in Schneider's favor and partly in Michigan's favor. Schneider then applied for leave to appeal *Schneider III* to the Michigan Supreme Court. Schneider's application was ordered held in abeyance pending the outcome of *Yellow Transportation IV*.

Yellow Freight III and *Schneider III* and remanding the cases to the Michigan Court of Appeals.[10] In *Yellow Transportation V*, the Michigan Court of Appeals reaffirmed its prior decision in *Yellow Freight II*, stating that its *Yellow Freight II* decision "stands on substantially stronger ground" as a result of this Court's decision in *Yellow Transportation IV*. (Yellow Pet. App. 9a) The Michigan Court of Appeals also issued an opinion in *Schneider IV* adopting the same conclusion it reached in *Yellow Transportation V*. (Schneider Pet. App. 5a) The Michigan Supreme Court issued identical orders on April 9, 2004 denying applications for leave to appeal the *Yellow Transportation V* and *Schneider IV* opinions.

REASONS FOR DENYING THE PETITIONS

Nothing in these petitions warrants the Court's further attention. The Court already has given explicit instruction in *Yellow Transportation IV* as to how the *Chevron* principles should be applied to the statute and agency determinations involved in this case. Since the ICC announced its interpretation more than ten years ago, no other state has sought to challenge the ICC's interpretation or apply the fee date provisions of the statute in the same manner as Michigan. There are no other cases – anywhere – involving the fee date interpretation issue. Of

[10] The remand order in part directed the parties to brief two issues which had been raised by the Solicitor General in his *amicus* brief in *Yellow Transportation IV*. On brief, all parties agreed that these issues either had been waived or had no bearing on the remaining issues in the case. *Yellow Transportation V* at 7, 8. Michigan did not raise either of these issues in its Applications for Leave to Appeal to the Michigan Supreme Court following *Yellow Transportation V* or *Schneider IV*.

the 17 Michigan judges who considered this issue at the various stages of the Michigan court proceedings, only two accepted Michigan's interpretation. No action is needed from this Court[11] to prolong Michigan's untenable position that its theory reflects the sole permissible construction of the statutory fee date language and that the ICC's interpretation of the statute thus can be disregarded.

Michigan, moreover, does not contend that the Michigan courts misstated the applicable law. Michigan agrees that the applicable standard for determining whether deference must be afforded to the ICC's ruling in *American Trucking* is that set forth in *Yellow Transportation IV*. It cites no instance where the Michigan courts misstated this standard or otherwise failed to articulate a proper explanation of how this Court's *Chevron* standard should be applied. Michigan's position that *Chevron* deference is required only where a statute is ambiguous also is accepted in the Michigan court decisions. *Yellow Freight II* at 27b; *Yellow Transportation V* at Yellow Pet. App. 9a Michigan's only criticism of its own courts' actions is that they failed to interpret the involved portion of the ISTEA

[11] The issue in this case is distinct from the issues in the group of three cases currently pending before this Court in Nos. 03-1230, 03-1234 and 03-1250. While those cases also involve per-vehicle fees charged to motor carriers by the MPSC, the fees arise under a different statutory provision applicable only to vehicles commercially plated in Michigan [Mich. Comp. Laws 478.2(2)]. Nos. 03-1230 and 03-1250 do not involve the ISTEA statute; No. 03-1234 does not involve a prior agency interpretation of ISTEA so as to require *Chevron* deference. A Michigan filing with this Court has distinguished the case in No. 03-1234 as one in which "neither action by nor an order of a federal agency is at issue." Brief of Respondents Michigan Public Service Commission, *et al.* in Opposition to Petition for Writ of Certiorari, No. 03-1234, *Mid-Con Freight Systems, Inc. v. Michigan Public Service Commission*, May 3, 2004 at 19.

statute as unambiguously requiring the position advanced by Michigan. At best, such an argument is nothing more than a claim of misapplication of a properly stated rule of law which is not appropriate for a grant of certiorari. Sup. Ct. R. 10

I. The ICC's Ruling in *American Trucking* is Based on a Reasonable Interpretation of ISTEA Which is Entitled to Deference Under *Chevron* and *Yellow Transportation IV.*

The decisions of the Michigan Court of Appeals in *Yellow Freight II*, *Schneider II*, *Yellow Transportation V*, and *Schneider IV* represent solidly based determinations that the ICC's resolution of the fee date issue in *American Trucking* constitutes a reasonable interpretation which is not foreclosed by the specific language of the ISTEA statute. The issue faced by the ICC in *American Trucking* and by the Court of Appeals in *Yellow Freight II* was application of the pertinent portion of ISTEA to the bingo stamp fee practices in place as of November 15, 1991. As noted previously, the pertinent portion of ISTEA requires that states establish a fee system that "will result in a fee * * * that is equal to the fee, not to exceed $10 per vehicle, that such state collected or charged as of November 15, 1991." 49 U.S.C. §11506(c)(2)(B)(iv)(III).

It is undisputed that on November 15, 1991, Michigan did not require payment of *any* registration fees for vehicles which were commercially plated in Illinois. This fact is established by affidavit evidence submitted by Michigan itself through its primary witness, Thomas Lonergan. Witness Lonergan stated that at the time pertinent to this case,

* * *

> i. The [Michigan] Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee.
>
> j. Under the above-described system, Yellow Freight which had 3,730 vehicles base plated in Illinois and Indiana, was not charged for those cab card stamps as those states did not charge fees for vehicles based in Michigan. * * * *This system was in effect for calendar years 1990 and 1991.* (Yellow Pet. App. 32a) (emphasis added)

This affidavit accordingly indicates that the zero fee system applicable to Yellow, Schneider and other similarly situated carriers would have been in effect on the determination date under the ISTEA statute, November 15, 1991.

Michigan does not claim that its September 1991 announcement of a new policy for 1992 had any impact on the operations of carriers during 1991. It presented no evidence of any instance in which it sought to require carriers that would have been subject to higher fees under the 1992 system to also pay these higher fees for the portion of 1991 following the date of the September 1991 announcement. To the contrary, Michigan's own documentation makes it clear that the zero fee policy for Illinois-plated vehicles would have applied to the specific situation in which a motor carrier might have sought to register vehicles for Michigan operations on the actual determination date of November 15, 1991, itself.

In the Instructions to the Interstate Cab Card Stamp Application provided by witness Lonergan for the operating

year beginning February 1, 1991 (1b-2b), Michigan told carriers that when the application form was used to apply for registration stamps as a part of an annual renewal, another blank form would be returned with the stamps "for possible use *during* the time period to *add additional vehicles* to your fleet" (emphasis added). The Instructions also provided that the annual time period to which the Instructions were applicable was the period from February 1 until January 31 of the following year and that the stamp fees were "subject to change annually."

Under these Instructions, in other words, if a carrier had needed to add additional Illinois-plated units to its Michigan interstate fleet to perform operations between November 15, 1991, and the end of the 1991 registration year, it would have registered those vehicles using the same forms as it used initially to register vehicles for the 1991 registration period and would have been entitled to the same per-vehicle fee of zero that had been applicable at the beginning of that period. Within the meaning of the statutory language, it thus is clear that "the fee * * * collected or charged as of November 15, 1991" to allow Illinois-plated vehicles to operate in Michigan on that date was *zero*.

Although Michigan argues that ISTEA can be interpreted to treat Michigan's advance acceptance of higher 1992 fees before November 15, 1991, as "collection" or "charging" of those fees as of that date, the statutory language does not foreclose the interpretation reached by the ICC. Among the dictionary definitions of "collect" or its derivatives are "to obtain payment or liquidation of * * * a

debt or claim"[12] and "debts, obligations, demands, liabilities that one may be made to pay by means of legal process."[13] Dictionary definitions of the alternative statutory term "charge" include "to impose a burden, duty, obligation or lien; to create a claim against property; to demand, * * * to impose a tax, duty, or trust; * * * to bill or invoice."[14] All of the foregoing definitions suggest that in order for an amount to be "collected," the amount must be owed, and that in order for an amount to be "charged," the amount must be demanded or made due.

As the 1992 fees would not have been due until February 1, 1992, the above definitions would suggest that Michigan's willingness to accept voluntary advance payments of these fees on November 15, 1991 would not constitute "collection" or "charging" of these fees. This conclusion was stated expressly by the Michigan Court of Appeals as a basis for concluding that the ICC's interpretation was preferable. *Yellow Freight II* at 28b, *Schneider II* at Schneider Pet. App. 9a Choosing the fees that were actually required on that date, rather than fees that were being paid voluntarily in advance, constitutes a logical choice on the part of the ICC in accord with accepted usage of the statutory terms "collected" and "charged."

Chevron and its following case law do not permit courts to substitute their interpretation of a statute for that of an agency when multiple interpretations of the statute are possible. The test under the *Chevron* case law rather is whether the underlying statute "unambiguously

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[12] *Black's Law Dictionary, Fourth Edition* (1951)

[13] *Id.*

[14] *Id.*

forbids the Agency's interpretation," is "manifestly contrary to the statute", or is "arbitrary or capricious in substance." *Barnhart v. Walton*, 535 U.S. 212, 218 (2002); *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). Nothing in the ICC's interpretation of the statute can be found to be so profoundly contrary to the statutory language so as to fall into these categories.

The ICC's interpretation also makes more sense than the interpretation advanced by Michigan in furthering the overall legislative purpose of Congress in enacting the ISTEA statute. The clear purpose of the statute was to guarantee that motor carriers would not be required to pay increases in fee levels beyond those in place as of November 15, 1991. As the Solicitor General noted in his prior brief to this Court, "there is no indication that Congress intended to allow the States to raise their registration fees at the expense of motor carriers; indeed, Congress gave every indication that it intended to minimize the costs of state registration." *Amicus Curiae* Brief of the United States in *Yellow Transportation IV* at 11 The U.S. House Conference Report described the purpose of this statutory language as follows:

> States will not be allowed to charge a greater fee * * * than the fee they charge under the former program as of November 15, 1991. *H.R. Conf. Rep. No. 404*, 102 Cong., First Sess. 437 (1991) reprinted in 1991 U.S.C.C.A.N. at 1818

The ICC also stated in its general rulemaking proceeding that the purpose of the statute was that "fees be frozen as of November 15, 1991," so as to cause "the burden of the registration system for carriers [to] be reduced." *Single State* at 9 ICC 2d 618. The U.S. Court of Appeals for the District of Columbia stated that the purpose of the statute

was that a "state may not charge more than was charged or collected in the past." *National Association of Regulatory Commissioners v. ICC*, 41 F.3d 721, 729 (D.C. Cir. 1994) (emphasis added) None of these purposes would be served by interpreting the ISTEA statute to allow Michigan to charge the higher 1992 fees to carriers such as Yellow or Schneider that were paying no fees at all for operations on the ISTEA determination date itself.

Whether or not the ICC's interpretation is the only possible reading of the statute, it clearly is a reasonable and thus permissible one. To paraphrase the Court's opinion in *Barnhart v. Walton*, "The statute's complexity, the vast number of [trucks and trucking companies it affects], and the consequent need for agency expertise and experience [should] lead [a court] to read the statute as delegating to the [ICC] considerable authority to fill in, through interpretation, matters of detail related to its administration." *Barnhart v. Walton, supra*, 535 U.S. at 225. If there ever was a "matter of detail" suitable to be resolved by agency decisionmaking, this is it. The ICC clearly was the appropriate body to make a choice between using the actual fee and using an announced but not yet effective fee in determining the statutory meaning of "the fee * * * collected or charged as of November 15, 1991." The Michigan Court of Appeals acted correctly in deferring to the ICC's interpretation.

II. This Court's Opinion in *Yellow Transportation IV* Supports the Michigan Court's Actions.

This Court's opinion in *Yellow Transportation IV* provides added support for the decisions of the Michigan Court of Appeals in *Yellow Freight II*, *Schneider II*, *Yellow*

Transportation V and *Schneider IV*. *Yellow Transportation IV* provides substantial guidance to lower courts on how to apply the ICC's decisions implementing ISTEA in subsequent interpretations of the ISTEA statute. In every respect, these guidelines support the analysis and outcome of *Yellow Freight II*. As the Michigan Court of Appeals noted in *Yellow Transportation V*, the conclusions reached initially in *Yellow Freight II* stand on substantially stronger ground as a result of this Court's opinion in *Yellow Transportation IV*. (Yellow Pet. App. 9a)

Yellow Transportation IV initially confirmed that the ICC decisions implementing ISTEA are entitled to full deference from subsequent reviewing courts under the principles announced in *Chevron*. *American Trucking*, the decision to which the Michigan Court of Appeals deferred in *Yellow Freight II*, is specifically referenced in *Yellow Transportation IV* as one of the ICC decisions to which deference was required. (49b) This Court noted that the ICC in promulgating standards for implementing ISTEA was acting under an express delegation of authority from Congress directing the ICC to promulgate standards for implementing the new Single State Registration System. 49 U.S.C. §11506(c)(1) (48b). The Court stated that express Congressional authorization to issue regulations or set standards is a "very good indicator of delegation meriting *Chevron* treatment." *Id.*, citing *United States v. Mead Corp., supra*, at 533 U.S. 218, 229. Under *Yellow Transportation IV*, courts seeking to interpret ISTEA are required to defer to the ICC's construction of the ISTEA statute as long as the ICC interpretation is reasonable. (50b)

Yellow Transportation IV also sets standards for determining the degree of required *Chevron* deference that are in complete accord with the standards followed by the

Michigan Court of Appeals in its *Yellow Freight II* opinion. *Yellow Freight II* found very clearly that the ISTEA statute was silent on the question of how the phrase "collected or charged as of November 15, 1991" should be applied to a situation in which a state was charging one fee for operations on that date but had announced and begun advance collection on that date of a different fee applying to the following year. The *Yellow Freight II* opinion stated specifically that

> We do not believe Congress had an intention on the precise question at issue. * * * Because the statute does not reveal Congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. (28b) (Citations omitted)

This very same lack of Congressional intent was found in the portion of ISTEA analyzed in *Yellow Transportation IV*. This Court noted specifically that courts are required to defer to the action of agencies such as the ICC "to resolve any ambiguities and fill in any holes in the statutory scheme." (51b) The Court specifically referenced its opinion in *Barnhart v. Walton, supra*, at 535 U.S. 212. (49b) The referenced text of *Barnhart* states that the fact that a "particular statutory provision says nothing explicitly about [a particular subject] * * * normally creates ambiguity. It does not resolve it." *Id.* at 535 U.S. 218. The opinion in *Yellow Freight II* thus was in complete conformity with the subsequently announced standards of this Court as to how courts are required to apply ICC interpretations of the ISTEA statute in light of Congressional silence on that statute's proper interpretation.

While *Yellow Transportation IV* did not specifically consider whether 1992 fees paid in advance before November 15, 1991 should be considered fees "collected or

charged as of November 15, 1991," statements of the Court at numerous points indicate that such a construction of the statute is not supportable. For example, *Yellow Transportation IV* describes the ICC's overall policy as "requir[ing] States to preserve fees at the level they actually collected or charged pursuant to reciprocity agreements *in place* as of November 15, 1991." (52b) (emphasis added) As noted previously, it is beyond dispute in this case that the reciprocity agreement "in place" as of November 15, 1991 was the 1991 agreement allowing Illinois-based vehicles to operate on Michigan highways on that date without payment of any bingo stamp fees. *Yellow Transportation IV* moreover stated specifically that "under the ICC's rule, where a state waives its registration fee, its 'fee * * * collected or charged' is zero and must remain zero." (50b) This is the precise language referenced by the ICC in *American Trucking* and cited in *Yellow Freight II* to describe Yellow's position that it was paying a state "zero fees" covering 1991 operations. *American Trucking* at 14b; *Yellow Freight II* at 26b

Yellow Transportation IV lastly provides added support for the concept recognized in *Yellow Freight II* that an important goal of ISTEA was to not allow registration fees to rise above the November 15, 1991, levels frozen by Congress. *Yellow Transportation IV* specifically confirms the ICC's discretion to shape its regulations and policies under ISTEA around the fee freeze concept. *Yellow Transportation IV* at 50b, 51b The fee freeze determinations by the ICC in *American Trucking* cited by this Court in *Yellow Transportation IV* occur within three paragraphs of the ICC's resolution of the fee date interpretation issue based on the same concepts. Compare, *American Trucking* at 17b, 18b Deference to *American Trucking* as required by

Yellow Freight II and confirmed in *Schneider II*, *Yellow Transportation V* and *Schneider IV* is thus entirely in accord with the opinion of this Court in *Yellow Transportation IV*.

CONCLUSION

The petitions for writ of certiorari should be denied.

Respectfully submitted,

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[Instructions, Interstate Cab Card Stamp Application for 1991 Operating Year (Exhibit F, Affidavit of Thomas R. Lonergan; November 21, 1996; *Schneider I*)]

Instructions:

1. **New applicant and ICC sub registrations** – For a new application or an ICC sub registration you must file Form A in duplicate. The filing fee for a new application is $25. The filing fee for a sub is $10. Exempt applications must file Form A-1 in duplicate.

2. **Cab Cards** – ICC regulated carriers, place the identification stamp on Form D, Uniform Identification Cab Card, available from NARUC, P.O. Box 684, Washington DC 20044. Exempt carriers may place the identification stamp on Form D-1, Uniform Identification Cab Card, available from NARUC.

3. **Expiration** – Cab card stamps are issued effective February 1 of the year for which they are issued and expire on January 31 in the succeeding calendar year.

4. **Cab card stamp fees** – The cab card stamp fees will vary depending upon the state in which the carrier's vehicles are commercially registered. Please refer to the accompanying chart to determine the fees appropriate to your fleet. Enter the number of vehicles and the fees for each state in the blanks provided in item 8, and calculate the total fees due. If vehicles in your fleet are commercially registered in a state or province which does not require the payment of a cab card stamp fee, you should still complete the form and order the appropriate number of cab card stamps. Where additional space is required, a plain sheet of paper may be labeled 'Appendix' and is the response continued by noting the item number being continued.

5. **Insurance** – The State of Michigan **does not** require interstate or exempt carriers to file a current insurance certificate.

6. **Return mailing address** – If stamps are to be mailed to an address other than listed on line 4 of this application, please furnish a self-addressed envelope.

7. **Payment of fees** – Make your check or money order payable to the **State of Michigan**. Funds must be in U.S. dollars. Payment of fees to accompany this application.

8. **Mailing Address –**

   MICHIGAN DEPARTMENT OF COMMERCE
   PUBLIC SERVICE COMMISSION
   6545 MERCANTILE WAY
   P.O. BOX 30221
   LANSING, MICHIGAN 48909-7504

9. Stamp orders are returned with another Interstate Cab Card Stamp Application for possible use during the time period to add additional vehicles to your fleet. Do not use that application for the following year because the stamp fees are subject to change annually. Stamp purchasers will automatically be mailed next years application sufficiently in advance of the due date.

10. **Questions – Please call (517) 334-6389**

9 I.C.C.2d 1184
Fed. Carr. Cas. ¶38,096
Interstate Commerce Commission (I.C.C.)

AMERICAN TRUCKING ASSOCIATIONS – PETITION FOR DECLARATORY ORDER – SINGLE STATE INSURANCE REGISTRATION NO. 41086

Decided November 18, 1993

Effective on November 22, 1993

The Commission finds that the Commonwealth of Kentucky is not eligible participate in the Single State Registration System and reaffirms and clarifies findings that States must observe reciprocity agreements when determining applicable per vehicle registration fees.

BY THE COMMISSION:

In a decision served May 18, 1993, in Single State Insurance Registration, 9 I.C.C.2d 610 (1993) (Single State), the Commission adopted regulations replacing the multi-State motor vehicle registration system, known as the "bingo card" program, with a simplified, base-State insurance registration system. The Commission acted in accordance with the mandate of §4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law No. 102-240 (ISTEA), which substantially amended 49 U.S.C. §11506 – Registration of Motor Carriers by a State. Under the new law and implementing regulations, carriers must (1) file proof of insurance with a single participating registration State, (2) pay fees to that State to be allocated among all participating States in which the carrier operates, and (3) keep in each of their vehicles a copy of a receipt issued by their registration State. The

Commission's new regulations are codified at 49 C.F.R. Part 1023. The "bingo" regulations previously were codified at that Part.

As pertinent here, §11506(c)(2)(D) provides that:

> Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under [predecessor Part 1023] shall be eligible to participate as a registration State * * * or to receive any fee revenue under [the new statutory provisions].

Also as pertinent, §11506(c)(2)(B)(iv) indicates that the fee system established under the amended standards "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The statute advises, at §11506(c)(2)(C), that "the charging or collection of any fee * * * that is not in accordance with the fee system established under [the pertinent provisions of the new law] shall be deemed to be a burden on interstate commerce." The Commission's new regulations mirror these statutory requirements at 49 C.F.R. §1023.2(a), 49 C.F.R. §1023.4(c)(4), and 49 C.F.R §1023.4(g), respectively.

On August 27, 1993, the American Trucking Associations (ATA) filed a petition requesting the Commission to determine that certain State actions are inconsistent with the above-cited statutory and regulatory requirements. Specifically, ATA alleges, first, that Kentucky has commenced participating in the new registration program even though, in view of facts alleged and interpreted by ATA, Kentucky is not eligible to participate. ATA alleges, second, that Texas is ignoring the requirement that fees be frozen as of November 15, 1991, and is charging all

carriers an across-the-board fee of $10. In this regard, ATA points to the Commission's determination that States must continue to observe reciprocity agreements that had the effect of reducing carriers' fees. See *Single State, supra*, 9 I.C.C.2d 617-619. As a third point, ATA contends that several participating States in addition to Texas are attempting to modify or disregard their reciprocity agreements and to raise fees beyond the levels that they charged based on their reciprocity agreements under the previous registration system.

In response to the petition, in a notice served September 16, 1993, and published at 58 Fed.Reg. 48,673 (1993), the Commission instituted a declaratory order proceeding and solicited public comment on the issues ATA raised. Twenty comments were received; the commenters are identified in the Appendix. In addition to the ATA, six motor carrier interests, the National Association of Regulatory Utility Commissioners (NARUC), the National Conference of State Transportation Specialists (NCSTS), and nine individual States commented. The United States Department of Transportation (DOT) and a single consultant also commented.

THE COMMENTS

Participation by Kentucky.

Regarding the eligibility issue, Kentucky contends that it did participate in the old registration system and therefore is eligible to participate in the new system.[1]

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[1] In referring to each participating State regulatory agency, we will simply use the State name.

Kentucky has been using multi-purpose vehicle identification cards, not the Form D "bingo cards" described in Subpart D of the old "bingo" regulations. A carrier operating in Kentucky has been required to carry the Kentucky card in each of its power units (in addition to the "bingo" card it carried if it operated in States participating in the "bingo" system). Kentucky indicates that its vehicle identification cards contain the vehicle identification number Kentucky was permitted to assign under the "bingo" regulations, the pertinent ICC authority number, and other identifying information relating to each power unit, thus providing an efficient mechanism for evidencing payment of appropriate roadway use and fuel taxes and compliance with licensing requirements, including the holding of appropriate intrastate operating authority. Kentucky indicates that its program uses the same vehicle identification renewal period as that used in the "bingo" program, allows for cab card re-entitlement, requires the submission of ICC authority, and allows the use of Form A for filing such authority (as under Subpart B of the old regulations). It indicates also that its program establishes the requirement of naming an agent for service of process (as under Subpart C of the old regulations) and maintains a uniform procedure for evidencing mandatory insurance that uses the "bingo" system Form E (as under Subpart E of the old regulations). Kentucky historically has charged a $25 application fee for filing evidence of ICC authority and a $10 annual per power unit fee.

NARUC supports Kentucky position that it is eligible to participate. NARUC emphasizes that Kentucky system has used elements of the old "bingo" program. In NARUC's view, Kentucky system was developed for the convenience of the interstate motor carriers, and it would be unfair to

penalize the State for some minor nonconformities made to accommodate the trucking industry. Further, NARUC argues, denying Kentucky the right to participate would force in-State carriers to register elsewhere, thereby burdening both carriers and other participating States.

The ATA and the American Movers Conference (AMC), opposing the Kentucky position, emphasize that carriers have been required to purchase "bingo" cards from NARUC to use in other participating States but, at the same time, have been required to purchase the Kentucky card from Kentucky for use only in that State. Distribution Services, Inc., emphasizes that Kentucky never has required a stamp for a "bingo" card. Gray Motor Line, Inc., asserts that there is no question that Kentucky does not meet the statutory criteria for participation, and Petroleum Transport Company, Inc., asserts that it would be unfair for Kentucky to start assessing fees when it never issued a "bingo" stamp. Yellow Corporation (Yellow) believes that Kentucky intends to continue its State card and participate in the new system and to collect a $10 per vehicle fee under that system. Yellow believes, then, that it would be required to pay $10 more per vehicle to operate in Kentucky than it did in 1991.

The commenting carriers are not unanimous in their opposition to Kentucky's position. The Kentucky Motor Transport Association (KMTA) asserts that, although Kentucky might not be in compliance with the law, the association wants Kentucky-based motor carriers to be afforded the convenience of registering in their home State. In KMTA's view, should Kentucky not be permitted to participate in the new system, Kentucky-based carriers would be subjected to a penalty through no fault of their own.

Both DOT and motor carrier consultant Joy B. Fitzgerald opine that Kentucky did not participate in the "bingo" system.

Compliance by Texas.

Regarding the matter of Texas' compliance with ISTEA and Single State, Texas points out that in our January 22, 1993, Notice of Proposed Rulemaking in the Single State proceeding at 58 Fed.Reg. 5,951 (1993), the Commission initially found "no good reason for our involvement" in reciprocity agreements between States. The Commission therefore initially concluded that States need not consider the amount charged under reciprocity agreements when determining their fees as of November 15, 1991.[2]

Accordingly, at the next regular session of the Texas legislature, at the request of the Texas regulatory agency, the legislature repealed the Texas reciprocity provisions of the State law. As of September 1, 1993, Texas no longer had any authorization to charge out-of-State motor carriers reduced vehicle registration fees based on reciprocity. However, as the legislation was nearing final passage, on May 18, 1993, the Commission served the final Single State decision. In that decision, we reversed our initial conclusion and found that States must take into consideration their reciprocity agreements in effect on November 15, 1991. In view of the turn of events, Texas has found

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[2] Texas indicates that, in past years, it has charged carriers $100 per insurance filing, a $25 application fee, a $1 cab card fee, and a $10 per vehicle registration fee. Under reciprocity provisions of Texas State law, some motor carriers were entitled to a reduced vehicle registration fee.

itself in the position of having to comply both with its own State law and the Commission's conflicting final regulations.[3]

Texas emphasizes that, contrary to ATA's assertions, as of the date of its pleading (September 30, 1993), Texas has not assessed or collected any fees or even adopted any fee schedule under the new system. Rather, Texas has been examining its administrative options. It has cooperated with Illinois in the preparation of a fee matrix. However, it has not taken any final action. It does not believe that it has acted in any manner that either conflicts with the Commission's new rules or gives rise to a controversy requiring Commission action.

Actions by States.

ATA explains that States entered into two basic types of reciprocity agreements under the "bingo" program. The first was based on a carrier's principal place of business. Under such an agreement, State A would assess a lower stamp fee for vehicles operated by a carrier whose principal place of business was in State B. and State B would reciprocate with respect to carriers having a principal place of business in State A. The second type of reciprocity agreement was based on the State of a vehicle's license plate registration. Under such an agreement, State C would assess a lower stamp fee for a carrier having vehicles "plated" in State D, regardless of where the carrier's

[3] Texas notes that, partially as a result of the Commission's ruling regarding reciprocity agreements, States have appealed the final rules, and court action is pending. See NARUC v. ICC, No. 93-1362 (D.C.Cir. filed May 27, 1993). See also, AIA v. ICC, No. 93-1450 (D.C.Cir. filed July 16, 1993).

principal place of business was located. State D would reciprocate for vehicles "plated" in State C.

ATA indicates that many States are using a fee matrix developed by Illinois that purportedly gives effect to the various States' reciprocity agreements. However, ATA argues, the Illinois fee matrix recognizes only those reciprocity agreements that were based on a carrier's principal place of business. ATA argues that neither the matrix nor the individual States acknowledge agreements and fees that were determined by State of vehicle registration. As a result, it argues, many carriers face sharply increased fees. ATA recommends that the Commission require participating States to allow carriers to submit to their base registration States evidence as to the fees they paid to participating States for 1991.

Yellow notes that reciprocity agreements have been based not only on principal place of business and vehicle registration State, but also on the type of operating authority held. Yellow echoes ATA's assertion that the States, in developing the matrix of fees to be used under the new system, have assumed that all reciprocity agreements were based on principal place of business. Yellow contends that this assumption will result in a revenue windfall for the States and impose an economic burden on the motor carrier industry. Yellow contends that some States, citing administrative difficulty and confusion, are applying pressure on "base plate agreement" States to convert their agreements to a principal-place-of-business basis. Yellow gives some examples of the harm it might suffer if agreements were modified.

Yellow proposes that motor carriers be allowed to provide to their registration States documentation

supporting the facts that they paid reduced fees for 1991 and that they continue to qualify for fee reductions. It suggests that States provide each other lists of States with whom they have agreements and the appropriate fees. States would then have the knowledge of the fee levels, but the carriers would have the burden of requesting and supporting reduced fees.

NARUC and the NCSTS argue that, originally, reciprocity agreements were based on the principal place of business or domicile State of the carrier. They assert that, contrary to ATA's statements, the agreements were not drafted or entered into in contemplation of where the carrier's vehicles were licensed or base-plated. Base-plating, which, they assert, began in the early 1960's under the International Registration Plan (IRP), was unknown when the States entered into their reciprocity agreements. (Commenters do not explain how reciprocity agreements relating to fees paid under the "bingo" system could pre-date the beginning of the program in the mid 1960's.) NARUC and the NCSTS go on to argue that, through the years, regulatory oversight in many States has been transferred from agency to agency, institutional memory has been diminished, and the intent and requirements of the reciprocity agreements have been lost, misinterpreted, or reinterpreted to further accommodate carriers. Some States, commenters assert, have lost or misplaced copies of their written agreements. Other States, they assert, assume that agreements were canceled and unilaterally began charging non-reciprocal fees to carriers without notifying the reciprocal State(s).

NARUC and the NCSTS dispute the ATA's allegation that States are eliminating some of their reciprocity agreements, favoring those based on principal place of

business over those based on base-plate States. They assert that, in actuality, States are reexamining their agreements and, as a result, are clarifying them. Consequently, some States are changing their fees and fee structures to conform to the letter of their agreements. Discrepancies are being found and corrected so that the agreements truly will confer reciprocal benefits once again. NARUC and NCSTS aver that States are removing inequities that resulted in some carriers paying more and others paying less than what they should have paid. They add that the statutory language concerning the freeze on fees was not intended to prohibit or enjoin States from correctly interpreting and enforcing previously entered into reciprocity agreements. Commenters contend that the KD) position would require States purposefully to misinterpret and misapply provisions of many reciprocal agreements.

NARUC and the NCSTS complain that some carriers manipulated the old registration system by claiming several different principal places of business. They believe that the States should be permitted to find the discrepancies in order to stop carriers from wrongfully securing benefits of reciprocity agreements. If the Commission allows carriers to submit to States evidence of past fees paid, they argue, it also should allow States to require carriers to disclose certain information, including principal places of business used.

The NCSTS adds that another problem with interpreting reciprocity agreements to apply to base-plate States is that, under the IRP, carriers can register different fleets in different States. It argues that, to give effect to the carriers' base-plate States would force the States to solicit additional information, would make fee collection

cumbersome, and would render the registration process vehicle-specific, contrary to law. The NCSTS also points out that the Illinois software package being used by a majority of States calculates fees based on principal place of business and cannot make distinctions in fees based on where a vehicle is licensed. Illinois argues that there is nothing in either the old or the new statute evidencing any intent of Congress to affect the right and practice of States to negotiate, enter into, modify, or rescind agreements granting reciprocal relief from registration fees.

Like NARUC and the NCSTS, Illinois contends that there have been and now are carriers that benefit from reciprocity agreements under which they do not qualify. Carriers that had been charged improper amounts under the agreements, it asserts, are not entitled to continue to pay those improper amounts. Illinois complains that a declaration that it is unlawful for a State to attempt to charge a fee different from the fee charged under the "bingo" system begs the question of whether a carrier was in fact even covered by an existing reciprocity agreement. Illinois concludes that, in view of the Commission's statements that the new system is designed to function without Commission supervision, this issue is inappropriate for a declaratory order proceeding.

Kansas contends that the Commission lacks jurisdiction over reciprocity agreements between two States and between a State and a motor carrier. Regarding the suggestion that carriers be permitted to submit evidence of fees paid, Kansas avers that it will accept evidence regarding fees only from participating States, not from carriers. Similarly, Texas queries how the Commission can determine the validity of an agreement made between two States based on State law. Texas indicates that it has

encountered problems verifying its reciprocity agreements with other States. It asserts that 10 of the 23 States it considered as having had reciprocity agreements with it have stated that they do not. Texas asserts that, if conditions for reciprocity did not exist, then the fees of less than $10 that Texas charged and collected were illegal under State law. It queries whether States must continue to charge "illegal fees." It complains that the Commission's ruling on reciprocity has turned the program into an administrative nightmare. DOT asserts that, if the fee charged on November 15, 1991, was one set under a reciprocity agreement, it seems clear that such fee constitutes the highest fee chargeable. The relevance of the fee charged on November 15, 1991, DOT asserts, may not be evaded by the artifice of canceling or modifying the relevant agreement. Raising fees to carriers that previously benefitted from reciprocity agreements, DOT contends, is contrary to the letter and spirit of the law.

Other matters.

Yellow raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.

DISCUSSION AND CONCLUSIONS

Participation by Kentucky. We conclude that Kentucky is not eligible to participate in the Single State Registration System. The statute is clear that only States which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under the predecessor registration system at 49 C.F.R. Part 1023 are eligible to participate. See 49 U.S.C. §11506(c)(2)(D). While the Kentucky program embraced some features of the "bingo" regulations at predecessor Part 1023, the program did not include any features of Subpart D – Registration and Identification of Vehicles and Driveaway Operations, embracing prior ss 1023.31 through 1023.42, the heart of the "bingo" system. It was Subpart D that detailed the manner in which carriers would apply for a stamp or number, pay appropriate fees therefor, and display proof of having paid and thus registered. Significantly, while every participating State required carriers to use the Form D "bingo" card described in Subpart D, Kentucky did not. As of January 1, 1991, if a Kentucky enforcement officer were to ask a driver to present a cab card evidencing vehicle registration, and the driver presented only a "bingo" card, the carrier would have been subject to a fine.

The position Kentucky and NARUC would have us adopt would require us to conclude that operation of a registration system that embraced some or many of Part 1023's requirements or that functioned under a color of right conferred by Part 1023 would suffice to merit a finding of eligibility. We cannot adopt a position that conflicts with the plain language of the law. Kentucky simply did not participate in the "bingo" program. Rather, Kentucky maintained its own private vehicle identification, taxation, and registration system and collected

additional fees apparently under color of right claimed under predecessor s 11506 and the "bingo" regulations adopted thereunder. We note that neither the NCSTS nor any State has come forward to argue that Kentucky did, in fact, participate in the "bingo" program. We are sympathetic to the arguments that Kentucky system was administratively efficient for the State and convenient for carriers, but the law does not give us the latitude to weigh such factors in the balance. In any event, Kentucky carriers that, under the "bingo" program, were required to register with many States will reap the benefits of greatly simplified registration under the new law.

Compliance by Texas. ATA has alleged that Texas is ignoring the statutory requirement (at 49 U.S.C §11506(c)(2)(B)(iv)) that fees be frozen as of November 15, 1991, has disavowed its reciprocity agreements, and is charging carriers an across-the-board fee of $10. In view of Texas' explanation of the matter, and of the record in its entirety, we do not believe that good cause exists for further considering Texas' action as an independent matter. Texas is among the States embroiled in the controversy of how to implement their reciprocity agreements under the new registration system. Accordingly, we believe it best to proceed by considering the States' actions and positions collectively.

Actions by States. ATA alleges that participating States are attempting to modify or disregard their reciprocity agreements and to raise fees beyond the levels that they charged based on their reciprocity agreements under the previous registration system. As seen, 49 U.S.C. §11506(c)(2)(B)(iv) requires that fees be frozen as of November 15, 1991. In our decision promulgating the new regulations required by ISTEA, we concluded that the

letter of the law mandated that States observe their reciprocity agreements when determining the fees they charged as of that date. *Single State*, 9 I.C.C.2d at 617-619. In reaching our conclusion, we recognized that the variety of reciprocity agreements might make collection of a range of fees cumbersome for some registration States. *Id.*, at 618.

We reaffirm our prior conclusion. The language of the statute is clear. States may not "clarify" their agreements, "correct discrepancies" in them, or "remove inequities" from them if the result is that fees frozen as of November 15, 1991 will change. NARUC and the NCSTS contend that the statutory language concerning the fee freeze was not intended to prohibit or enjoin States from correctly interpreting and enforcing agreements they previously had entered into with each other. Illinois contends that there is nothing in either the old or the new statute evidencing any intent of Congress to affect the right and practice of States to negotiate, enter into, modify, or rescind agreements granting reciprocal relief from registration fees. These contentions find no support in the unambiguous language of the statute or in its legislative history. Congress mandated a fee freeze; it did not qualify its mandate. Had Congress intended that States be permitted to revise fee schedules to account for errors in calculation or other mistakes, it could have so specified, but it did not.

It follows that States may not use a mechanism, such as the Illinois matrix, that requires or results in the wholesale disavowal of all or part of any type of reciprocity agreement on which a fee was charged or collected as of November 15, 1991, whether the agreement is based on the carrier's principal place of business, the State of a

vehicle's license plate of registration (so- called base-plate registration), or on the type of operating authority held (as alleged by Yellow). We will not, as ATA would have us do, find that States are violating the law and our regulations. It is not clear, nor can it be in this proceeding, precisely what action each participating State is taking. We find simply that it is inconsistent with the statute for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system. We understand that determining the statutorily mandated fees and devising a system for collecting and disbursing them is a difficult task. We will not presume to offer solutions here. Neither will we endorse solutions such as those proposed by ATA and Yellow, as described above. We expect that motor carrier and State interests will continue to work together to arrive at practicable, equitable solutions. We expect, also, that States will delay enforcement until after all carriers have had sufficient time to register their vehicles, and distribute registration receipts, under the program as ultimately implemented. In all matters relating to implementation of the new registration program, we will continue to offer our informal assistance. Our staff is available to help the States and the carriers resolve any lingering problems.

Other matters. Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

VICE CHAIRMAN SIMMONS, joined by CHAIRMAN McDONALD, dissenting in part:

I disagree with the majority's overly strict interpretation of ISTEA which precludes the state of Kentucky from participating in the Single State Registration System. In my opinion, Kentucky's previous registration program encompassed a sufficient number of the requirements of Part 1023 to make it eligible for the new program. The Commission's latitude in interpreting the laws it is charged to administer, often found in the past to be quite broad, has in this instance been found to be very narrow. Thus, I believe we may weigh factors in addition to strict statutory interpretation to decide this issue. Among such factors are the lack of any substantial opposition to, and, the support of KMTA and NARUC for Kentucky's participation. Also, denying Kentucky the right to participate will force instate carriers to register out-of-state, thus burdening both the carriers and the registration states.

We find:

1. The Commonwealth of Kentucky is not eligible to participate in the Single State Registration System.

2. It is inconsistent with the statute for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system.

3. This decision will not significantly affect either the quality of the human environment of the conversation of energy resources.

It is ordered:

1. The petition for declaratory order is granted to the extent discussed above.

2. This proceeding is discontinued.

3. This decision is effective on November 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden. Vice Chairman Simmons, joined by Chairman McDonald, dissented in part with a separate expression.

APPENDIX

LIST OF COMMENTERS

Motor Carrier Interests

American Movers Conference
American Trucking Associations
Distribution Services, Inc.
Gray Motor Line, Inc.
Kentucky Motor Transport Association
Petroleum Transport Company, Inc.
Yellow Corporation

State Interests

National Association of Regulatory Utility Commissioners
National Conference of State Transportation Specialists
Illinois Commerce Commission
Iowa Department of Transportation
Kansas Corporation Commission
Kentucky Transportation Cabinet
Maine Secretary of State, Bureau of Motor Vehicles
Missouri Division of Transportation

New Mexico State Corporation Commission
Railroad Commission of Texas
Wisconsin Department of Transportation

Federal Government

United States Department of Transportation

Other Commenters

Joy B. Fitzgerald, Inc.

231 Mich. App. 194, 585 N.W.2d 762,
Fed. Carr. Cas. ¶84,070

Michigan Court of Appeals

YELLOW FREIGHT SYSTEM INC., Plaintiff-Appellee,

v.

STATE OF MICHIGAN, Department of Treasury, State Treasurer, Department of Commerce, Director of Department of Commerce, Michigan Public Service Commission and Michigan Public Service Commissioners, Defendants-Appellants.

YELLOW FREIGHT SYSTEM INC., Plaintiff-Appellant,

v.

STATE OF MICHIGAN, Department of Treasury, State Treasurer, Department of Commerce, Director of Department of Commerce, Michigan Public Service Commission and Michigan Public Service Commissioners, Defendants-Appellees.

Docket Nos. 194703, 195564.
Submitted April 14, 1998, at Lansing.
Decided Aug. 14, 1998, at 9:15 a.m.
Released for Publication Nov. 2, 1998.

Interstate commercial carrier brought action alleging state had collected registration fees in excess of amount allowed by federal law under single-state registration system (SSRS). The Court of Claims, William E. Collette, J., granted carrier's motion for summary judgment, awarding partial refund plus interest, but denied its motion for attorney fees. State appealed refund and carrier appealed denial of attorney fees. On consolidated appeals, the Court of Appeals, McDonald, J., held that: (1) state was precluded from collecting registration fees from carrier in excess of amount charged or collected for statutorily-designated registration year; (2) governmental immunity statute did not apply to carrier's action; (3) refund to

carrier was appropriate remedy; and (4) carrier was not entitled to recover attorney fees.

Affirmed.

O'Connell, J., filed an opinion concurring in part and dissenting in part.

Eames Wilcox by Ronald J. Mastej and John W. Bryant, Detroit, for Plaintiff-Appellee.

Frank J. Kelley, Atty. Gen., Thomas L. Casey, Sol. Gen., and Don L. Keskey and Judith I. Blinn, Asst. Attys. Gen., for Defendants-Appellants.

Before RICHARD ALLEN GRIFFIN, P.J., and McDONALD and O'CONNELL, JJ.

McDONALD, Judge.

Plaintiff, an interstate commercial carrier, brought this action asserting that defendants (the state) had collected registration fees pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4) in excess of the amount allowed by federal law, specifically the single-state registration system (SSRS). The Court of Claims, ruling on cross motions for summary disposition, agreed with plaintiff and granted its motion. The court entered judgment in favor of plaintiff for $99,580 plus interest and ordered that the state was barred from further collection of the registration fees until 49 U.S.C. "11506(c) (B)(iv) [sic] is rescinded." In Docket No. 194703, the state appeals this ruling as of right. In Docket No. 195564, plaintiff challenges the Court of Claims' denial of plaintiff's request for attorney fees. We affirm.

I

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA), P.L. 102-240, which substantially amended 49 U.S.C. § 11506[1] and directed the Interstate Commerce Commission (ICC) to reform the licensing and registration system existing in the states. The statute mandated the creation of a new system, the SSRS. The statute required the ICC to prescribe amendments of the previously existing standards and set forth certain requirements for the new standards.[2]

The provision at issue, 49 U.S.C. § 11506(c)(2)(B)(iv)(III), stated that the amended standards shall establish a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991."

The regulations promulgated by the ICC repeated the phrase "collected or charged as of November 15, 1991" without further explanation. See 49 C.F.R. § 1023.4(c)(4)(ii) (1995), later redesignated as 49 C.F.R. § 367.4(c)(4)(ii) (1996).

Because the statute essentially froze the fees a state could collect at the level existing as of November 15, 1991, the fee system in effect in this state at that time is pertinent to understanding the issues raised in this case. For

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[1] 49 U.S.C. § 11506 was amended and recodified and now appears at 49 U.S.C. § 14504. To avoid confusion, we will refer only to 49 U.S.C. § 11506.

[2] The registration system in effect before and after the ISTEA is explained in detail in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC*, 309 U.S. App. D.C. 325, 41 F.3d 721 (1994).

the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as "bingo stamps," for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to M.C.L. § 478.7(4); M.S.A. § 22.565(1)(4), the state had reciprocity agreements with certain other states so that each would waive the fees for vehicles from the other. The dispute arises in part because the state changed the method it used for determining reciprocity. For 1991, the state used the "base-plating system," which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business. The revised renewal applications were mailed to all interstate motor carriers in September 1991. Importantly, the 1992 fees to be "collected or charged" by the state were based on a calendar year and therefore were not due and owing until January 1, 1992.

The change in the method of determining reciprocity resulted in a substantial increase in the fees plaintiff owed the state for the 1992 registration year. Under the base-plating system used for 1991, plaintiff paid the state $50 for five vehicles that were "base-plated" in Oklahoma, but paid nothing for 3,730 vehicles "base-plated" in Illinois and Indiana, because those states did not charge fees for vehicles based in Michigan. However, plaintiff's principal place of business is Kansas, which had no fee waiver agreement with Michigan. Therefore, for 1992, plaintiff paid $10 a vehicle, a total of $37,850 under the new system. Plaintiff sent, and the state received, the fees for

1992 before November 15, 1991. Plaintiff voluntarily paid its 1992 fees early in order to prevent any disruption of its trucking activities at the commencement of the January 1, 1992, calendar year.

II

The state argues the Court of Claims erred in determining that the state could not charge plaintiff $10 a vehicle. According to the state, it had "charged or collected" $10 a vehicle as of November 15, 1991. Plaintiff argued, and the Court of Claims agreed, the statute was properly interpreted to refer to the fees charged or collected for the 1991 registration year. We affirm the Court of Claims' decision with regard to this issue.

The Court of Claims' opinion indicates its decision was based on the ICC's decision in *American Trucking Ass'n Ins – Petition for Declaratory Order – Single State Ins Registration,* 9 ICC2d 1184 (1993). In *American Trucking,* the ICC discussed various issues that had arisen under the SSRS. The plaintiff sought clarification from the ICC concerning the statutory language. The ICC summarized the issue raised by the plaintiff in the following way:

> Yellow [Freight] raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the "bingo" regulations, carriers filed applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to

> November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane.
>
> The ICC resolved the matter as follows:
>
> Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991[,]" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

The state argues the court should not have followed *American Trucking* because it does not comport with the unambiguous language of the statute and renders the November 15, 1991, deadline a "nullity." Therefore, the state argues the decision was not entitled to the deference usually afforded an agency's interpretation of a statute that the agency is charged with enforcing.

This Court has recognized that deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v. General Motors Corp.,* 134 Mich. App. 429, 432, 351 N.W.2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v. Johnson & Johnson Vision Products, Inc.,* 217 Mich. App. 705, 713, 552 N.W.2d 679 (1996), citing *Chevron USA, Inc. v. Natural Resources Defense Council,*

Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in any year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue. . . ." *Id.* at 843, n. 9, 104 S.Ct. 2778. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.*

We conclude that the agency's interpretation of the statute was reasonable. In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991.

Plaintiff's voluntary payment of fees not due and owing does not affect our analysis.

The state also contends the Court of Claims' ruling applying the *American Trucking* decision by the ICC "effectively repeals existing reciprocity agreements and/or alters them to reinstate a previous basis for determining

fee waivers thereunder[,]" and thereby "contravenes the Tenth Amendment."[3] This argument has no merit. We disagree with the premise of the state's argument, i.e., that the Court of Claims' decision repeals or alters any reciprocity agreements. Any effect on a state's ability to alter its reciprocity agreements is the result of Congress' decision to freeze fees at the level as of November 15, 1991. Congress has the authority to take this action under the Commerce Clause, U.S. Const., art. I, § 8.

The state argues the language in the *American Trucking* decision by the ICC was not binding on the state because the notice of institution of declaratory action resulting in that decision did not indicate facts specific to Michigan. We disagree. The Court of Claims did not conclude that the ICC decision in *American Trucking* was binding on the state. However, the court could not properly disregard the agency's interpretation of a statute merely because the state did not participate in the proceeding. The state has not provided, nor are we aware of, any authority holding that an alleged deficiency in the notice of institution of declaratory action affects judicial review of an agency's interpretation of a statute.

The state also suggests that states should not be required to consider reciprocity agreements in determining the amount of fees "charged or collected as of November 15, 1991." In *Single-State Ins Registration,* 9 ICC2d 610 (1993), the ICC determined that states must consider the reciprocity agreements. The ICC's decision in this regard

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[3] *U.S. Const., Am. X* states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

was upheld in *Nat'l Ass'n of Regulatory Utility Comm'rs v. ICC,* 309 U.S. App. D.C. 325, 41 F.3d 721 (1994). Although that decision is not binding on this Court, we find it persuasive and adopt its ruling with regard to this issue.

III

We also reject the state's argument that governmental immunity, M.C.L. § 691.1407; M.S.A. § 3.996(107), bars plaintiff's action. The wrong alleged by plaintiff does not fall within the definition of a tort. This action to recover fees paid in excess of the amount allowed by federal law is analogous to an action to recover illegal taxes. "The remedy to recover illegal taxes paid is in assumpsit for money had and received." *Service Coal Co. v. Unemployment Compensation Comm.,* 333 Mich. 526, 531, 53 N.W.2d 362 (1952), quoting *Salisbury v. Detroit,* 258 Mich. 235, 241 N.W. 888 (1932). An action in assumpsit for money had and received is not an action in tort. Therefore, governmental immunity from tort liability under M.C.L. § 691.1407; M.S.A. § 3.996(107) does not apply.

IV

The state also contends plaintiff was required to request a declaratory ruling from the PSC as a prerequisite to court review. We disagree. The state relies on both §§ 63 and 64 of the Administrative Procedures Act, M.C.L. § 24.263; M.S.A. § 3.560(163) and M.C.L. § 24.264; M.S.A. § 3.560(164). However, neither section would support reversing the judgment entered in favor of plaintiff.

Plaintiff's action is not accurately characterized as simply an action for a declaratory judgment available under § 64. Rather, as previously discussed, the action was

essentially an action in assumpsit for money had and received. Furthermore, only the validity or applicability of rules that had been formally promulgated as rules may be challenged in actions for declaratory judgments under § 64. See *Jones v. Dep't of Corrections,* 185 Mich. App. 134, 137, 460 N.W.2d 575 (1990). The state has not suggested that the collection of fees was pursuant to a rule that had been formally promulgated under the APA. Because plaintiff's action was not a challenge to the validity or applicability of a formally promulgated rule, § 64 of the APA does not require plaintiff to get a declaratory ruling as a prerequisite to judicial review.

To the extent that the state claims that plaintiff was required to get a declaratory ruling under § 63, we also find that section inapplicable. Section 63 indicates that the agency "may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." Assuming plaintiff could have requested a declaratory ruling, § 63 does not require plaintiff to do so before seeking judicial review.

V

We next address the relief that the court awarded to plaintiff, specifically, a refund of $99,580, which is the amount collected for 1994, 1995, and 1996. Arguing that a refund is contrary to the United States Supreme Court decision in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990), the state requests the remedy be limited to prospective relief commencing at the time of "any final appellate decision" on the issue.

Contrary to the state's argument, we believe that *McKesson* indicates that a refund is an appropriate remedy in this case. In *McKesson,* the United States Supreme Court considered whether prospective relief was an adequate remedy for wholesale liquor distributors who sought a refund of excess taxes they had paid pursuant to Florida's excise tax scheme. The scheme was found unconstitutional because it discriminated against interstate commerce. In determining the appropriate remedy, the Court concluded that due process required more than prospective relief:

> The question before us is whether prospective relief, by itself, exhausts the requirements of federal law. The answer is no: If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. [*Id.* at 31, 110 S.Ct. 2238.]

The state cites *McKesson* for its discussion of the "pass-on" defense to an action for a tax refund. See *McKesson, supra* at 47-48, 110 S.Ct. 2238. The state suggests a refund is not necessary if the expense of the unlawfully collected fees was passed on to plaintiff's customers. However, the *McKesson* Court ultimately rejected the defense in that case, *id.* at 48-49, 110 S.Ct. 2238. The state has not cited any authority indicating that the pass-on defense has been adopted in this jurisdiction, and we decline to adopt it in this case.

The state also cites *LCI Int'l Telecommunications Corp. v. Dep't of Commerce,* 227 Mich. App. 196, 574 N.W.2d 710 (1997), as support for its argument that plaintiff should receive only prospective relief. In *LCI,* this Court determined that the defendants had consistently misinterpreted a statute for over twenty years, resulting in improper assessments against telecommunications carriers. The Court held that its holding should be applied only prospectively, in part because the ruling was not "clearly foreshadowed." In the present case, the result was clearly foreshadowed by the ICC's decisions in *American Trucking* and *Single-State Registration,* which were issued in 1993, less than a year after the ICC adopted the SSRS.

The state also contends that, if this Court does not limit Yellow Freight to prospective relief, it should order a remand to the PSC to allow the state to change the fee schedule to retroactively surcharge carriers who benefited from the state's misapplication of the SSRS. The state relies on language in *McKesson* suggesting that, as one of the alternatives to providing a refund to the aggrieved distributors in that case, Florida could assess and collect back taxes from the petitioners' competitors. *Id.* at 40, 110 S.Ct. 2238. However, the adequacy of any remedy necessarily depends on the basis for relief. In *McKesson,* the petitioners were entitled to relief because a statute imposing an excise tax discriminated in favor of distributors of local products. The remedies the Court approved were ways Florida could undo the discriminatory effects of the statute and make the tax scheme valid under the Commerce Clause. In the present case, plaintiff is entitled to relief because the state collected fees contrary to a statute. Because the purpose of the relief in this instance is not to undo discriminatory effects, surcharging carriers who

were allegedly undercharged is unrelated to providing plaintiff with an adequate remedy in this case. The only way to provide plaintiff with "meaningful backward-looking relief," *McKesson, supra* at 31, 110 S.Ct. 2238, to undo the misapplication of the statute is to order a refund of the amounts wrongfully collected.[4] We express no opinion whether the state may surcharge other carriers because that issue is not appropriately before us in the context of this case.

VI

In Docket No. 195564, plaintiff advances several issues relating to the court's denial of plaintiff's motion for attorney fees pursuant to 42 U.S.C. § 1988. Although the court did not explicitly rule on the merits of plaintiff's claim under 42 U.S.C. § 1983, we conclude that the denial of attorney fees was appropriate because the § 1983 claim was not viable against either the state agencies or the state officials.

Case law indicates plaintiff could not prevail in a § 1983 action against the state agencies. Section 1983 applies to "person[s]," and the United States Supreme Court has held that a state agency is not a "person" for the purposes of § 1983. *Hardges v. Dep't of Social Services,* 201 Mich. App. 24, 27, 506 N.W.2d 532 (1993), citing *Howlett v. Rose,* 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332

[4] The holding in *McKesson* is limited to situations in which a state places a taxpayer under duress to pay tax promptly when due and limits the taxpayer to challenging the tax after payment. The state does not suggest that plaintiff was given the opportunity to challenge the fees before payment and does not suggest that a distinction should be drawn in this context between the payment of fees and taxes.

(1990), and *Will v. Michigan Dep't of State Police,* 491 U.S. 58, 66, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

Plaintiff was not entitled to relief on the basis of its § 1983 claim brought against the state officials acting in their official capacity. Section 1983 claims seeking prospective injunctive relief may be brought against state officials acting in an official capacity. *Will, supra* at 71, n. 10, 109 S.Ct. 2304; *Hardges, supra.* However, the United States Supreme Court has held that a state court cannot grant injunctive or declaratory relief under § 1983 in state tax cases when an adequate legal remedy exists. *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm.,* 515 U.S. 582, 115 S.Ct. 2351, 132 L.Ed.2d 509 (1995).

We are not persuaded by plaintiff's attempt to distinguish *Nat'l Private Truck* on the basis that the fees in this case were collected under federal law pursuant to a system implemented by the ICC. Plaintiff contends the principles of comity and federal deference to state authorities underlying the decision in *Nat'l Private Truck* are not relevant in this case. However, federal law does not require that states charge the fees, but rather sets forth the method and limits on states that choose to collect the fees. Plaintiff's contention, "No issues of state tax law or state tax administration are here involved," is disingenuous and does not provide a meritorious basis for distinguishing *Nat'l Private Truck.*

We also disagree with plaintiff's suggestion that the Supreme Court intended its decision in *Nat'l Private Truck* to be limited to taxes and therefore not apply to fees. On the basis of the principles of comity and federalism, the Supreme Court concluded that Congress did not intend § 1983 claims to be brought in state tax cases when an

adequate state remedy is available. Those principles apply equally well when the revenue collection is in the form of a fee.

VII

The Court of Claims properly granted plaintiff's motion for summary disposition. The state was precluded from collecting fees from plaintiff in excess of the amount charged or collected for the 1991 registration year. Plaintiff is entitled to a refund of the amount improperly collected. We also affirm the Court of Claims' denial of plaintiff's motion for attorney fees pursuant to § 1988 because plaintiff had no viable § 1983 claim against any of the defendants.

Affirmed.

RICHARD ALLEN GRIFFIN, P.J., concurred.

CONCURRING/DISSENTING OPINION

O'CONNELL, Judge (concurring in part and dissenting in part.)

I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.

The primary goal of statutory interpretation is to ascertain and give effect to legislative purpose. *Haworth, Inc. v. Wickes Mfg. Co.*, 210 Mich. App. 222, 227, 532 N.W.2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry*

Brokers, Inc. v. City of Warren, 210 Mich. App. 304, 307, 532 N.W.2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v. Thrasher,* 196 Mich.App. 320, 323, 493 N.W.2d 457 (1992), aff'd. 446 Mich. 61, 521 N.W.2d 214 (1994).

The pertinent language in 49 U.S.C. § 11506(c)(2)(B)(iv)(III) provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include "November 15, 1991." This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v. General Motors Corp.,* 448 Mich. 147, 160, 528 N.W.2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra.*

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To

determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc. v. Governor*, 217 Mich. App. 439, 457, 553 N.W.2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state (for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 U.S.C. § 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

At stake here is the state's interest in collecting higher fees from plaintiff in accordance with recent changes in the state's regulatory scheme, and plaintiff's

interest in avoiding those fee increases and continuing to operate under the old scheme. Each party argues that the other stands to receive a windfall if the other's interpretation of the statutory language at issue is adopted. That statutes have the effect, intentionally or not, of benefiting some and burdening others is not a matter of dispute, and the Intermodal Surface Transportation Efficiency Act is no exception. Under any interpretation of 49 U.S.C. § 11506(c)(2)(B)(iv)(III), someone will win and someone will lose. Although the state's reading of the statute to cause plaintiff to have to continue to pay much higher fees simply because plaintiff chose to pay 1992 fees before November 15, 1991, may seem a harsh result, the result is equally harsh if the state is obliged to forgo receiving the higher revenues to which its own laws entitle it simply because the federal statute articulated a date of late 1991 instead of early 1992. For these reasons, I would avoid any concern for who benefits, or who gets burdened, from 49 U.S.C. § 11506(c)(2)(B)(iv)(III) and simply give effect to its plain language.

Although I express no disagreement with the reasoning of part V of the majority opinion, I do not join in that part because it concerns the relief to which plaintiff is entitled, where under my reading of the statute in question plaintiff is not entitled to any relief. I concur with parts III, IV, and VI.

Supreme Court of the United States
YELLOW TRANSPORTATION, INC., Petitioner,
v.
MICHIGAN, et al.
No. 01-270.
Argued Oct. 7, 2002.
Decided Nov. 5, 2002.

Interstate commercial carrier sued state, alleging that state had collected registration fees in excess of those allowed by federal law under the Intermodal Surface Transportation Efficiency Act (ISTEA). The Court of Claims granted carrier's motion for summary judgment, awarding partial refund plus interest. State appealed. The Court of Appeals, 231 Mich. App. 194, 585 N.W.2d 762, affirmed, and leave to appeal was granted. The Michigan Supreme Court, Weaver, C.J., 464 Mich. 21, 627 N.W.2d 236, reversed and remanded. Certiorari was granted. The United States Supreme Court, Justice O'Connor, held that Interstate Commerce Commission's (ICC's) interpretation of provision of the Intermodal Surface Transportation Efficiency Act (ISTEA) limiting registration fees that participating states could collect from motor carriers under the new single state registration system, so as to prevent participating states from collecting fees under the new system in excess of those actually charged and collected in light of fee waivers which states had granted pursuant to interstate reciprocity agreements, was permissible reading of statutory language and was entitled to deference.

Reversed and remanded.

Justice Stevens concurred in judgment and filed opinion.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, post, p. 379.

Charles A. Rothfeld, Washington, DC, for petitioner.

Austin C. Schlick, Washington, DC, for United States as amicus curiae, by special leave of the Court, supporting the petitioner.

Thomas L. Casey, Lansing, MI, for respondents.

Justice O'CONNOR delivered the opinion of the Court.

We granted certiorari in this case, 534 U.S. 1112, 122 S.Ct. 918, 151 L.Ed.2d 883 (2002), to determine whether the Michigan Supreme Court erred in holding that, under 49 U.S.C. §14504(c)(2)(B)(iv)(III), only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991."

I

A

Beginning in 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State proof of their Interstate Commerce Commission (ICC) interstate operating permits. Pub.L. 89-170, 79 Stat. 648, 49 U.S.C. §302(b)(2) (1970 ed.). Congress provided that state registration requirements would not constitute an undue burden on interstate commerce so long as they were consistent with regulations promulgated by the ICC. Ibid. Prior to 1994, the ICC allowed States to charge interstate motor carriers

annual registration fees of up to $10 per vehicle. See 49 CFR § 1023.33 (1992). As proof of registration, participating States would issue a stamp for each of the carrier's vehicles. §1023.32. The stamp was affixed on a "uniform identification cab car[d]" carried in each vehicle, within the square bearing the name of the issuing State. §1023.32(d)-(e). This system came to be known as the "bingo card" system. *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993).

The "bingo card" regime proved unsatisfactory to many who felt that the administrative burdens it placed on carriers and participating States outweighed the benefits to those States and to the public. H.R.Rep. No. 102-171, pt. I, p. 49 (1991); H.R. Conf. Rep. No. 102-404, pp. 437-438 (1991), U.S.Code Cong. & Admin.News 1991, pp. 1526, 1679. In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Congress therefore directed the ICC to implement a new system to replace the "bingo card" regime. [1]* See Pub.L. 102-240, § 4005, 105 Stat.1914, 49 U.S.C. § 11506(c) (1994 ed.). Under the new system, called the Single State Registration System, "a motor carrier [would be] required to register annually with only one State," and "such single State registration [would] be deemed to satisfy the registration requirements

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[1] Congress abolished the ICC in 1995 and assigned responsibility for administering the new Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub.L. 104-88, §101, 109 Stat. 803. The provisions of ISTEA governing the system were amended and recodified. See 49 U.S.C. §14504(c). The Federal Highway Administration, under the Secretary of Transportation, adopted the ICC regulations that implemented the Single State Registration System, 61 Fed.Reg. 54706, 54707 (1996), and the Federal Motor Carrier Safety Administration now has authority to administer the system, 49 U.S.C. § 113(f)(1)

of all other States." §11506(c)(1)(A) and (C). Thus, one State would – on behalf of all other participating States – register a carrier's vehicles, file and maintain paperwork, and collect and distribute registration fees. §11506(c)(2)(A). Participation in the Single State Registration System was limited to those States that had elected to participate in the "bingo card" system. § 11506(c)(2)(D).

ISTEA also capped the per-vehicle registration fee that participating States could charge interstate motor carriers. Congress directed the ICC to

> "establish a fee system . . . that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." §11506(c)(2)(B)(iv).

Congress provided that the charging or collection of any fee not in accordance with the ICC's fee system would "be deemed to be a burden on interstate commerce." §11506(c)(2)(c).

The ICC issued its final implementing regulations in May 1993 after notice-and-comment proceedings. *Single-State Insurance Registration, supra*. The rulemaking gave rise to the central question in this case: whether, under the Single State Registration System, States were free to terminate "reciprocity agreements" that were in place under the "bingo card" regime. *Id.*, at 617-619. Under these agreements, in exchange for reciprocal treatment, some States discounted or waived registration fees for carriers from other States. *Id.*, at 617.

In issuing a set of proposed rules and soliciting further comments, the ICC questioned whether it had the power to require States to preserve pre-existing reciprocity agreements. Single State Insurance Registration, No. MC-100 (Sub-No. 6), 1993 WL 17833, *12 (Jan. 22, 1993); see Single State Insurance Registration – 1993 Rules, 9 I.C.C.2d 1, 11 (1992). It noted that these agreements were voluntary and mutually beneficial and commented that "as long as no carrier is charged more than [a State's] standard November 15, 1991, fee for all carriers (subject to the $10 limit), the requirements of [ISTEA] are satisfied." 1993 WL 17833, *12.

In its final implementing regulations, however, the ICC concluded, in light of further comments, that its preliminary view on reciprocity agreements was inconsistent with ISTEA's fee-cap provision and with "the intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." *Single State Insurance Registration*, 9 I.C.C.2d, at 618. The agency therefore determined that States participating in the Single State Registration System "must consider fees charged or collected under reciprocity agreements when determining the fees charged or collected as of November 15, 1991, as required by §11506(c)(2)(B)(iv)." Id., at 618-619; see also *American Trucking Associations – Petition for Declaratory Order – Single State Insurance Registration*, 9 I.C.C.2d 1184, 1192, 1194-1195, 1993 WL 483607 (1993). The National Association of Regulatory Utility Commissioners (NARUC) and 18 state regulatory commissions sought review of the ICC's determination and certain provisions of the Single State Registration System regulations. *NARUC v. ICC*, 41 F.3d 721 (C.A.D.C.1994). The United States Court of Appeals

for the District of Columbia concluded that the plain language of the statute supported the ICC's determination that States participating in the new system must consider reciprocity agreements under 49 U.S.C. §11506(c)(2)(B)(iv). 41 F.3d, at 729.

B

Prior to the implementation of the Single State Registration System, Michigan had participated in the "bingo card" regime. See App. 5 (Affidavit of Thomas R. Lonergan, Director, Motor Carrier Regulation Division of the Michigan Public Service Commission ¶3e) (hereinafter Lonergan Affidavit). The Michigan Legislature had directed the Michigan Public Service Commission to levy an annual registration fee of $10 per vehicle on interstate motor carrier vehicles and simultaneously endowed the commission with authority to "enter into a reciprocal agreement with a state." Mich. Comp. Laws Ann. §478.7(4) (West 1988). Pursuant to such reciprocal agreements, the commission was empowered to "waive the fee [otherwise] required." Ibid. Petitioner in this case is an interstate trucking company headquartered in Kansas. For calendar years 1990 and 1991, the Michigan Public Service Commission did not levy a fee for petitioner's trucks that were licensed in Illinois pursuant to its policy "not to charge a fee to carriers with vehicles registered in states . . . which did not charge Michigan-based carriers a fee." App. 6 (Lonergan Affidavit ¶3i). In 1991, however, the Michigan Public Service Commission announced a change in its reciprocity policy to take effect on February 1, 1992. Under the new policy, the commission granted reciprocity treatment based on the policies of the State in which a carrier maintained its principal place of business rather than the

State in which individual vehicles were licensed. Because Michigan had no reciprocal arrangement with Kansas, the Michigan Public Service Commission sent petitioner a bill in September 1991, levying a fee of $10 per vehicle for the 1992 registration year on petitioner's entire fleet, with payment due on January 1, 1992. Petitioner paid the fees in October 1991 under protest and later brought suit in the Michigan Court of Claims seeking a refund of the fees it paid for its Illinois-licensed vehicles after the Single State Registration System came into effect. See 49 U.S.C. §11506(c)(3) (1994 ed.) (setting effective date of January 1, 1994). Petitioner alleged that, because Michigan had not "collected or charged" a fee for the 1991 registration year for trucks licensed in Illinois, ISTEA's fee-cap provision prohibits Michigan from levying a fee on Illinois-licensed trucks.

On cross motions for summary disposition, the Michigan Court of Claims ruled in favor of petitioner. Yellow Freight System, Inc. v. Michigan, No. 95-15706-CM (Mar. 13, 1996) (Yellow Freight System I). The Court of Claims' holding relied on an ICC declaratory order in which the agency held that ISTEA's fee-cap provision caps fees at the level "collected or charged" for registration year 1991, not those fees levied for registration year 1992 in advance of the statutory cutoff date. *Id.*, at 3-4; see *American Trucking Associations, supra*, at 1192, 1195.

The Michigan Court of Appeals affirmed on similar grounds. *Yellow Freight System, Inc. v. Michigan*, 231 Mich. App. 194, 585 N.W.2d 762 (1998) (Yellow Freight System II). The Court of Appeals also rejected Michigan's argument that States need not consider reciprocity agreements in determining the level of fees "charged or collected as of November 15, 1991," noting that the ICC had determined

reciprocity agreements must be considered, and that the agency's decision had been upheld in *NARUC v. ICC, supra*. *Yellow Freight System II, supra*, at 202-203, 585 N.W.2d, at 766.

The Michigan Supreme Court reversed. *Yellow Freight System, Inc. v. Michigan*, 464 Mich. 21, 627 N.W.2d 236 (2001) (Yellow Freight System III). The court concluded that "reciprocity agreements are not relevant in determining what fee [a State] 'charged or collected' as of November 15, 1991." Id., at 33, 627 N.W.2d, at 242. The court expressly rejected the District of Columbia Circuit's contrary conclusion. Id., at 29, 627 N.W.2d, at 240 (citing *NARUC v. ICC, supra*). The Court applied *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), but determined that the statute unambiguously forbids the ICC's interpretation. *Yellow Freight System III*, 464 Mich., at 29-31, 627 N.W.2d, at 240-241. Reasoning that "[t]he new 'fee system' is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991," the court concluded that "[w]e must look not at the fees paid by [petitioner] in any given year, but at the generic fee Michigan charged or collected from carriers as of November 15, 1991." *Id.*, at 31, 627 N.W.2d, at 241 (emphasis added). Two justices dissented, finding ISTEA's fee-cap provision ambiguous, the ICC's construction reasonable, and deference therefore due. *Id.*, at 33-43, 627 N.W.2d, at 242-247 (opinions of Kelly and Cavanagh, JJ.).

The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had

"canceled its reciprocity agreements with other States in 1989." Brief for United States as Amicus Curiae 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

II

[1] Neither party disputes that *Chevron, supra*, governs the interpretive task at hand. In ISTEA, Congress made an express delegation of authority to the ICC to promulgate standards for implementing the new Single State Registration System. 49 U.S.C. §11506(c)(1) (1994 ed.). The ICC did so, interpreting ISTEA's fee-cap provision subsequent to a notice-and-comment rulemaking. See *United States v. Mead Corp.*, 533 U.S. 218, 229, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001) ("[A] very good indicator of delegation meriting Chevron treatment [is an] express congressional authorizatio[n] to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed"). The Federal Highway Administration adopted the ICC's regulations, see supra, at 374, n., and the Single State Registration System is now administered by the Federal Motor Carrier Safety Administration. 49 U.S.C. §113.

[2] Accordingly, the question before us is whether the text of the statute resolves the issue, or, if not, whether the ICC's interpretation is permissible in light of the deference to be accorded the agency under the statutory scheme. If the statute speaks clearly "to the precise question at issue," we "must give effect to the unambiguously expressed intent of Congress." Chevron, 467 U.S., at 842-843, 104 S.Ct.

2778. If the statute is instead "silent or ambiguous with respect to the specific issue," we must sustain the agency's interpretation if it is "based on a permissible construction of the statute." *Id.*, at 843, 104 S.Ct. 2778; see *Barnhart v. Walton*, 535 U.S. 212, 217-218, 122 S.Ct. 1265, 152 L.Ed.2d 330 (2002).

ISTEA's fee-cap provision does not foreclose the ICC's determination that fees charged under States' pre-existing reciprocity agreements were, in effect, frozen by the new Single State Registration System. The provision requires that the new system "result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). The language "collected or charged" can quite naturally be read to mean fees that a State actually collected or charged. The statute thus can easily be read as the ICC chose, making it unlawful "for a State to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system." *American Trucking Associations*, 9 I.C.C.2d, at 1194; see *Single State Insurance Registration*, 9 I.C.C.2d, at 618-619.

The Michigan Supreme Court held that the language of ISTEA's fee-cap provision compels a different result. Although it acknowledged that ISTEA is silent with respect to reciprocity agreements, the court nonetheless concluded that the fee-cap provision mandates that those agreements have no bearing in the determination of what fee a State "collected or charged" as of November 15, 1991. *Yellow Freight System III*, 464 Mich., at 31, 627 N.W.2d, at 241. The court reasoned that the Single State Registration System was "based not on the fees collected from one

individual company, but on the fee system that the state had in place." Ibid. (emphasis added). While such a reading might be reasonable, nothing in the statute compels that particular result. The fee-cap provision refers not to a "fee system," but to the "fee . . . collected or charged." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Under the ICC's rule, where a State waives its registration fee, its "fee . . . collected or charged" is zero and must remain zero. The ICC's interpretation is a permissible reading of the language of the statute. And, because there is statutory ambiguity and the agency's interpretation is reasonable, its interpretation must receive deference. See *Chevron, supra*, at 843, 104 S.Ct. 2778.

As commenters to the ICC during the rulemaking pointed out, to allow States to disavow their reciprocity agreements so as to alter any fee charged or collected as of November 15, 1991, would potentially permit States to increase their revenues substantially under the new system, a result that the ICC quite reasonably believed Congress did not intend. See *Single State Insurance Registration*, 9 I.C.C.2d, at 618. The ICC concluded that its rule best served the "intent of the law that the flow of revenue for the States be maintained while the burden of the registration system for carriers be reduced." Ibid. The agency considered that allowing States to disavow reciprocity agreements and charge a single, uniform fee might reduce administrative burdens, but expressed concern that carriers' registration costs, and state revenues, would balloon. Ibid. (noting that some carriers' fees "assertedly could increase as much as 900%," and that one commenter presented a "worst case scenario" in which "State revenues could increase from $50 million to $200 million").

Respondents argue that Congress intended for each State to set a single, uniform fee. While such a mandate would, indeed, have simplified the new system, it is not compelled by the language of the statute, which instructs the ICC to implement a system under which States charge a fee, not to exceed $10 per vehicle, that is equal to the fee such States "collected or charged as of November 15, 1991."

Respondents also contend that, by freezing the fees charged under reciprocity agreements as part of the fee cap, the ICC added a constraint not within the express language of the statute. The Michigan Supreme Court expressed a similar concern, stating that "[i]t is not for the ICC . . . to insert words into the statute." 464 Mich., at 32, 627 N.W.2d, at 241-242. It was precisely Congress' command, however, that the ICC promulgate standards to govern the Single State Registration System, 49 U.S.C. §11506(c) (1994 ed.), and it was thus for that agency to resolve any ambiguities and fill in any holes in the statutory scheme. See *Mead Corp., supra*, at 229, 121 S.Ct. 2164; *Chevron, supra*, at 843-844, 104 S.Ct. 2778. To hold States to the fees they actually collected or charged seems to us a reasonable interpretation of the statute's command that state fees be "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III).

Respondents argue that the ICC's rule contravenes ISTEA's fee-cap provision by limiting what a State can charge based on what was collected from or charged to a particular carrier. Respondents point out that the focus of the provision is on the actions of the State, not the actions of any particular carrier. While we agree that the statute focuses on what States "collected or charged" rather than

what particular carriers paid, we do not agree that the ICC's rule focuses the inquiry on the latter. Under the "bingo card" regime, States entered into reciprocity agreements that waived or reduced fees charged to particular categories of vehicles. The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991.

Because the ICC's interpretation of ISTEA's fee-cap provision is consistent with the language of the statute and reasonably resolves any ambiguity therein, see *Chevron*, 467 U.S., at 843, 104 S.Ct. 2778, the Michigan Supreme Court erred in declining to enforce it.

The judgment is therefore reversed, and the case is remanded to the Michigan Supreme Court for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCURRING OPINION

Justice STEVENS, concurring in the judgment.

In my opinion there is no ambiguity in the relevant provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In that Act, Congress delegated to the Interstate Commerce Commission (ICC) the power to prescribe "standards" and "amendments to standards" that would create a "Single State Registration System." 49 U.S.C. §11506 (1994 ed.). As a part of that delegation, the ISTEA gave the ICC broad authority to establish a "fee system" that would comply with three conditions, the third

of which contained two requirements[1]. The fee for each participating State (1) may not exceed $10 per vehicle and (2) must be equal to the fee that the State "collected or charged as of November 15, 1991." §11506(c)(2)(B)(iv)(III).

Because Michigan had both collected and charged a $10 fee in 1991 – and continued to do so thereafter – the Michigan Public Service Commission did not violate either of those statutory requirements when it changed its method of determining reciprocity with respect to individual carriers[2]. Indeed, the essential features of Michigan's fee system for 1992 were the same as they were in 1991: The amount of the fee that the "State collected or charged" was $10 per vehicle both before and after November 15, 1991; that fee was assessed on exactly the same kinds of vehicles both before and after that date; the State had reciprocal arrangements, providing for either a discount or

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[1] "(B) RECEIPTS; FEE SYSTEM. – Such amended standards –

. . . .

"(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991. . . . " 49 U.S.C. §11506(c)(2)(B)(iv) (1994 ed.)

[2] As explained by the majority, ante, at 376, Michigan changed its policy from determining reciprocity with respect to an individual vehicle based on where that vehicle was registered and had obtained a license plate to determining reciprocity based on where the trucking company that owned the individual vehicle maintained its principal place of business.

a waiver of the fee with the same States in 1992 that it did in 1991.

Michigan did, however, violate an additional requirement imposed by the ICC when the State modified its method of determining the home State of out-of-state vehicles. That agency-imposed requirement effectively precluded a State from making a systemic change that would significantly increase its revenues. I think it clear that the statutory delegation of power to the ICC to "establish a fee system" was broad enough to include the power to impose additional requirements to ensure that a State would not impose a "burden on interstate commerce." See §11506(c)(2)(B)(iv), (c)(2)(C). The rulemaking proceeding confirmed the ICC's power to require the States to preserve pre-existing reciprocity agreements to avoid a scenario in which "some States would realize windfalls." *Single State Insurance Registration*, 9 I.C.C.2d 610, 618 (1993) (responding to comment alleging, among other things, that if reciprocity agreements were discontinued, "State revenues could increase from $50 million to $200 million"); see ante, at 375. Although Michigan did not abandon any reciprocity agreement, I think it equally clear that the ICC could prohibit a change in the method of implementing those agreements that would significantly increase a State's revenues, and therefore threaten to burden commerce[3].

[3] Not every change in how reciprocity is determined would lead to an increase in a State's revenues. Indeed, it may be that a State's revenues would decrease after making such a change. I am satisfied, however, that the potential for an increase in these circumstances is a sufficient threat to burden commerce within the meaning of the statute.

Thus, I concur in the Court's judgment because the statute authorized the ICC to decide that the States' pre-existing reciprocity agreements should, in effect, be "frozen." I do not, however, believe that the statute mandated that result. Nor do I believe that the additional constraint imposed by the ICC should be upheld as a permissible construction of subsection (c)(2)(B)(iv)(III). Rather, in my opinion, it was a permissible exercise of the broad authority vested in the ICC to "establish a fee system" that would not create "a burden on interstate commerce." See §11506(c)(2)(B)(iv), (c)(2)(C). It is on this basis that I concur in the judgment of the Court.